

DECISION ON VARIANCE BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

December 3, 2009

Michael Biglow, owner and Dale Ahlvin, agent have requested a **variance** from the terms of Section 13-1-40(c)(3)(d) and 13-1-40(c)(4)a2 and 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 initial 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.

Section 13-1-40(c)(4)(a)(2) states: Except as provided in subparagraph b., no new foundations of any kind, additional stories, other expansion, or accessory construction shall be permitted. For the purpose of this section of the Ordinance, repair of 25% or more of the lineal perimeter of the foundation shall be considered a replacement or new foundation and not a repair.

Applicants are seeking a variance to replace more than 25% of the lineal perimeter of the foundation to a non-conforming structure located 27' from the ordinary high water mark of Kern Lake. The replacement foundation will be approx. 62' x 27' (1,674 sq ft) or 204 lineal feet.

The property is a 1.159-acre parcel (ID# 04-016-2-46-07-27-3-05-002-06000), located in part of Gov't Lot 2, Section 27, Township 46 N, Range 7 W, Town of Delta, Bayfield County, WI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The applicant seeks a variance to replace more than 25% of the linear perimeter of a foundation and walls of a nonconforming structure 27' from the ordinary high water mark of Kern Lake.
2. The variance is requested because Section 13-1-40(C)(3)(D) and 13-1-40(C)(4)(A)(2) limit reconstruction of exterior walls and foundations to 25%.
3. The applicant hired Dale Ahlvin to remodel a house and replace a roof. Mr. Ahlvin was informed that new trusses would put the weight of the roof on the outside walls. When removing the inner wall covering Mr. Ahlvin discovered broken up cement flooring, substantial sagging and no proper footings under the walls.
4. The construction plan now is to lift the building, remove the existing foundation and put in new footings and a reconstructed foundation.
5. This lot on Kern Lake is a small 1.59 acre parcel with substantial areas of wetlands.
6. The board has considered all of the evidence including Exhibit A1, the application

packet. That packet includes a Town Board recommendation to approve the variance based upon there being no additional negative impacts.

7. Assistant Zoning Administrator Doug Casina testified as follows:
 - A. The present site of the building is nonconforming not only to the shoreland setback but it is 60' from the centerline of the town road rather than the required 63'.
 - B. It would be nearly impossible to move the building to a conforming site on the premises due to numerous wetlands.
 - C. There is one building on the site, a house with attached garage.
 - D. The reconstruction of the home will not increase the impervious surface on the site, whatsoever.
 - E. The applicant has also applied for a new septic system.
8. The board has considered whether or not an unnecessary hardship exists to justify the requested variance in this case. Unnecessary hardship is best explained as whether compliance with the strict letter of the restrictions governing the setbacks would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with the restriction unnecessarily burdensome. The board finds that the unnecessary hardship test has been met.
9. In determining whether an unnecessary hardship burden is met the board has considered the purpose of the zoning restriction in question, which is to protect natural resources including this lake. There will be no increase in impervious surface if the variance is granted.
10. The board has also considered the effect on this particular property which would be benefitted by reconstructing this home and keeping it from falling down.
11. The board has also considered the effect of the variance on the neighborhood and feels that it would be positive overall.
12. The board has also considered the larger public interest and feels that it would be met if there were reasonable conditions placed on the variance.

Decision:

For all the above reasons the variance is granted with the following conditions:

1. The new structure would have a code compliant septic system.
2. A mitigation plan as approved and prepared by the Land Conservation Department would be followed.
3. There would be no further construction on the site.
4. There would be no second story or additional living space added.

5. There would be no additional impervious surfaces on the site.
6. The reconstructed home would utilize natural colors in the exterior siding and roof, to blend in with the surrounding area.
7. All of the above conditions are to be complied with not later than October 31, 2010.

Motion made by Philip Lupa, seconded by Lee Wiesner to grant the variance.

MOTION PASSED

VOTE: Yes 3 No 1

Members in favor: Randy Matis, Philip Lupa and Lee Wiesner.

Opposed: Richard Compton

Dated: December 7, 2009

Randy G. Matis

Members Present: Randy Matis, Philip Lupa, Lee Wiesner, Richard Compton

Also Present: Michael Fauerbach, Attorney for BOA

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