



DECISION ON VARIANCE BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

Case #1  
July 30, 2009

The Bayfield County Planning and Zoning Department is requesting clarification regarding a decision made on impervious surface rendered by the Bayfield County Board of Adjustment. This clarification is in regards to the Board's decision dated January 29, 2004 – Case (#04-01B) in which decision #2. states: the garage will be constructed on the existing impervious surface, and no increase in impervious surface will be allowed on the entire condo plat.

In addition to the clarification the Department seeks two additional requests; (1) review and possible action regarding termination of a Conditional Use Permit (#92-9839) granted to Arthur W. Khalar, Jr for a two unit mobile home park on the subject property. and (2) permitting for the existing structure.

Following the outcome:

**Nancy J. Walsh and Linda S. Mackley** request a **variance** from the terms of Section 13-1-32(b)(e)(1), row 2, column 1 of the Bayfield County Zoning Ordinance. This section requires: (e)

**Multiple Unit Developments.** Multiple Unit Developments providing shoreline access to navigable waters shall be subject to the following minimum requirements:

	<b>Class 1 Lakes, Lake Superior</b>	<b>Class 2 Lakes</b>	<b>Class 3 Lakes, Rivers, Streams</b>
<b>Shoreline Frontage</b>	50 feet per unit; 600 feet minimum	100 feet per unit; 800 feet minimum	150 feet per unit; 1,200 feet minimum
<b>Open Space (except as provided below)</b>	30,000 square feet per unit	60,000 square feet per unit	120,000 square feet per unit

Applicants seek a variance to construct a 8' x 14' (112 sq. ft.) deck on the easterly side of the residence.

The property is a 0.032-acre parcel (ID# 04-004-2-44-09-08-4-00-641-60000), described as Unit 6, Sunset Condominium with und Interest in common elements in V. 999 P.882 subject to ease IM 2004R-493948 IM 2003R-479612 Section 8, Township 44 N, Range 9 W, Town of Barnes, Bayfield County, WI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicants seek a variance to construct an 8' x 14' (112 sq. ft.) deck on the easterly side of their residence.

2. This deck would require a variance because of a condition placed on the entire condo plat in a previous decision for Mr. Bruner in 2004 that there be no additional impervious surface on the entire condo plat.
3. The Town Board has recommended approval of the variance.
4. The applicants purchased this property after learning that there were some problems with the structure related to zoning code regulations and those really had centered on nonconformities related to the value and size of the building relative to the permit. According to Zoning & Planning Administrator Karl Kastrosky, possible enforcement action was discussed earlier but it was decided not to pursue it.
5. As presently configured, the applicants' home has only one useable exit and the proposed deck would provide a second exit through an existing sliding glass door that is 6 ft. off the ground.
6. This lack of a second useable exit presents safety and fire issues and the applicants' insurance has been cancelled.
7. There was also a prior conditional use permit on this site for a 2 unit mobile home park. The past zoning history will be discussed further below, but the Board finds that there have been no mobile homes on the site for almost 10 years.
8. The first issue to consider is whether the proposed deck would constitute additional impervious surface which was forbidden by this Board in their prior Bruner decision. The Board realizes that what is and is not impervious surface related particularly to decks is somewhat in a state of flux but the Board finds that at least based on the present situation and the facts of this case, that deck would constitute additional impervious surface requiring a variance.
9. Zoning & Planning Administrator Karl Kastrosky reviewed the past zoning history of this site and it is very complicated and in some ways quite unsatisfactory. While the Board finds that there have been no trailers on this site for a period of 10 years, there has also been testimony from Mr. Furtak that when this particular building was constructed it was permitted as a mobile home even though it is not a mobile home as defined by the ordinance.
10. The Board is also cognizant of the fact that when these applicants went to purchase their property neither the real estate salesperson nor any other people they talked to informed them of all the potential problems. They learned of it only by talking to a neighbor.
11. The Board has also noted that part of the exhibit pack shows the condominium plat which shows ghost sites, including one for another trailer. The Board finds that this could very well create problems and unrealistic expectations for future purchasers. From a zoning perspective there are certain aspects of this condominium plat that are simply a mess.

12. For all of the above reasons and as further stated below, the Board finds that to deny a variance in this case would create unnecessary hardship for the applicants. The Board has considered unnecessary hardship as whether compliance with the strict letter of the restriction governing area 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 based upon this standard there would be an unnecessary hardship.
13. In applying the unnecessary hardship standard the Board has first of all considered the purpose of the ordinance. One of the purposes of the Bayfield County ordinance is to further the maintenance of safe conditions and also to control building sites and the placement of structures. The lack of a second exit is a safety problem. The possible, although questionable, existence of the conditional use permit for the mobile homes is also an impediment to the proper placement of structures and land uses.
14. The Board has also considered the effect that this variance would have on the property and feels that it would have a good effect on the property because of the need for a second exit and the safety issues.
15. The Board has considered the effect of the variance on this neighborhood. The Board feels that the construction of this deck is going to have no negative adverse effect on adjoining natural resources, based on Mr. Lobermeier's letter and also based on the testimony of the owner that it is sandy soil on the site where the deck would be located.
16. The Board has also considered the larger public interests and feels that those interests would be greatly served by this variance because it would help to get rid of the alleged conditional use permit and would help to clean up what amounts to a zoning and enforcement mess.
17. The Board also finds that the larger public interests would be served by increasing safety with a second exit and has also considered the comments of Mr. Kastrosky that to deal with this issue would be beneficial to the entire community.

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

1. The applicants will not cut any vegetation in front of their building in the area between the road and Bony Creek.
2. In addition to the pre-existing condition for no additional impervious surfaces, the applicants and at least three-fourths of the condo association membership would agree that the conditional use permit for the mobile homes is terminated and that something should be recorded at the Register of Deeds office advising the public that these ghost sites for trailer homes are not valid.
3. The applicants will also agree to remove blacktop equal in square footage to the size of the deck.

4. The deck shall not exceed 112 sq. ft. in size.

Motion made by Richard Compton, seconded by Lee Wiesner, to grant the variance with conditions.

MOTION PASSED

VOTE: Yes 5 No 0

Dated: August 5, 2009

*Randy J. Matis*

R E C E I V E  
AUG 10 2009  
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Members Present: Richard Compton, Randy Matis, Phil Lupa, Jacqueline LaBelle, Lee Wiesner

Also Present: Michael Fauerbach, Attorney for BOA