

DECISION ON VARIANCE
BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

Case #2
May 28, 2009

Sean & Rachael Duffy are requesting a **variance** as authorized under the terms of Section 13-1-32(b)(1) of the Bayfield County Zoning Ordinance. This section states: (1) except as provided in Section 13-1-26, no land use permit shall be issued for a lot having frontage on a classified lake unless the lot meets the following minimum lot requirements, and except as provided in Section 13-1-22(a)(2), (5) and (6), Section 13-1-40, and paragraphs (2) and subsection (dm) below, any structure thereon shall meet the following minimum setback requirements for the class in which the lake is included: (provided that if an applicable zoning district dimensional requirement in Sec 13-1-60 is more restrictive, it shall apply instead):

Lake Class	Class 1	Shoreline Vegetation Protection Area	50 ft.
Lot Area	30,000 sq. ft.	Side Yard Setback	10' min/ 40' total
Shoreline Frontage	150 ft.	Rear Yard Setback	10'
Buildable Core	3,000 ft.		
Shoreline Setback	75 ft.		

Applicants seek to remove an existing cabin with deck (28' x 32') 896 sq. ft currently 8' from the ordinary high water mark of Twin Bear Lake, and construct a new cabin 30' x 30' (900 sq. ft.) at 44' from the ordinary high water mark instead of the required 75'.

Property is a 0.4850-acre parcel (ID# 04-024-2-47-08-33-4-00-207-27000) described as Lot 16, Ledin's Subdivision, Section 33, Township 47 N, Range 8 W, Town of Iron River, Bayfield County, WI (metes & bounds description available in Zoning Office).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicants request a variance to tear down an existing building that with the deck totals approximately 896 square feet and is 8' from the ordinary high water mark of a Class 1 lake.
2. The replacement structure that would require a variance would be approximately 900 square feet and 44' from the ordinary high water mark.
3. The existing structure is liveable but in poor repair.
4. The Town Board recommended approval of this variance.

5. This variance request involves a small, pre-existing, nonconforming lot located on a peninsula.
6. The new structure would be located almost in the center of the peninsular lot.
7. The evidence was uncontradicted and from many sources to the effect that there is no site for building on this land that meets the 75' setback and that the site proposed by the applicants is as far from the lake as you can get and still be on the site in question.
8. Assistant Zoning Administrator Doug Casina gave certain information regarding the site, as follows:
 - a. In addition to the residence in question there are two other nonconforming structures on the site; one shed approximately 50' from the water and another shed approximately 40' from the water.
 - b. There is not presently a code compliant sanitary system on the site, although there is a well of some sort.
 - c. The topography of the site is such that there is a high point close to the middle of the lot or peninsula.
9. At this time there is not a stormwater mitigation plan from the Land Conservation Department but the applicants are agreeable to complying with the conditions of such a plan.
10. The applicants have also indicated that they are agreeable with the following conditions:
 - a. A code compliant sanitary system.
 - b. Removing all three of the presently existing nonconforming structures.
 - c. That the new structure be located in accord with the sketch prepared by Point North that is part of Exhibit B1.
 - d. That there be no further development on the lot nor addition of significant impervious surfaces.
11. The Board has considered whether or not this matter would constitute an unnecessary hardship if a variance was denied and determined that it would. The Board has looked at the unnecessary hardship as whether compliance with the strict letter of the restriction governing setbacks would unreasonably prevent the owner from using the property for a permitted purpose or to render conformity with such restrictions unnecessarily burdensome.
12. In applying that standard the Board has considered the purpose of the zoning restriction in question which is designed in significant part to keep buildings farther from the water and protect lakes. In this case, by granting the variance there would be a new building but it would be much farther from the lake than the existing building.
13. The Board has considered the effect of the variance on the property and it is believed that it would benefit the property as compared to what is presently on the property because of the removal of other nonconforming structures.
14. For the same reasons, the Board believes that the variance would benefit the neighborhood.
15. The Board also feels that the larger public interest would be benefitted because the lake would be protected and this would constitute reasonably orderly redevelopment of the lot.

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

- a. The applicants will comply with stormwater management and other mitigation as suggested by the Land Conservation Department in its report which has not yet been completed.
- b. The applicants will remove the two existing sheds prior to the start of construction of the new residence. The old residence will be removed and other mitigation including the stormwater management plan will be completed not later than November 1, 2010.
- c. The new structure will be located in accord with the sketch prepared by Point North in Exhibit B1.
- d. There will be a code compliant sanitary system.
- e. There will be no further development on the site nor addition of significant impervious surfaces such as driveways, decks or other buildings. Minor additional impervious surfaces such as small stones for a walkway to the lake would be permissible.

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

MOTION PASSED.

VOTE: Yes 4 No 0

Dated: JUNE 1, 2009

Randy Matis

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Members Present: Richard Compton, Randy Matis, Phil Lupa, Jacqueline LaBelle.

Also Present: Michael Fauerbach, Attorney for BOA