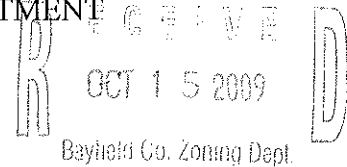


DECISION ON RECONSIDERATION
BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

Case #2
October 1, 2009



Pursuant to Sec 13-1-102A(h)(2) of the Bayfield County Ordinance the Bayfield County Zoning & Planning Department will request that the Board of Adjustment on its own motion reconsider its decision from the July 2009 meeting in the Nancy Walsh and Linda Mackley variance case. The reason for the request for reconsideration is that one of the conditions of the variance in the above case required that the applicants and at least three-fourths of the condominium association do certain things. The condominium association has refused to abide by the condition.

This matter may or may not require a public hearing with additional evidence. If the board determines that additional evidence is necessary then the public hearing shall occur at some date in the future as determined by the board otherwise the only purpose of the October 1, 2009 meeting of the Board of Adjustment as related to this case is the issue of reconsideration of the prior decision. In regard to that reconsideration issue, the board may need to decide whether the prior Conditional Use Permit (CUP) allowing mobile homes has been terminated due to non-use and that decision may occur at the October 1, 2009 meeting.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Zoning & Planning Department requests that the Board of Adjustment, on its own motion, reconsider their prior decision of July 30, 2009.
2. The decision granted a variance to allow the applicants to construct an 8 x 14 deck on the east side of the residence.
3. The public hearing notice of the July 30, 2009 hearing indicated that the zoning department was also seeking a review and possible action on Conditional Use Permit #92-9839 granted to Arthur W. Khalar Jr. for a two unit mobile home park on the subject property.
4. At paragraph 7 of the July 30, 2009 decision this board found that there had been no mobile homes on this condominium plat for in excess of ten years.
5. The variance granted to the applicants on July 30, 2009 was conditioned on certain things occurring, including an agreement with at least three-fourths of the condominium association members that the conditional use permit for the mobile home be terminated and that something to that effect be recorded at the Register of Deeds office. There was testimony on July 30, 2009 that the condominium association would likely agree to this.
6. The applicants sought the approval of three-fourths of the condominium association members but were unsuccessful in that attempt.
7. The variance involved granted the right to build a small deck which was needed (and so far as the board knows is still needed) for access, fire, safety and insurance issues.
8. The board feels that it would be unfair and illegal to hold the variance hostage to the approval of a condominium association that is not controlled by the applicants because the unnecessary hardship standard has been met, for the reasons stated in the July 30, 2009 decision, regardless of what position the other members of condominium

- association take regarding possible conditions on that variance.
9. The TePoels, who have recently submitted a letter, are also condominium association members. Their letter claims a different history of mobile homes on the site, that is, different than the uncontradicted testimony of no trailers for over a ten year period as established at the July 30, 2009 public hearing.
 10. The legal notice of this matter for the October 1, 2009 meeting of the Board of Adjustment stated that this board would determine today whether more evidence was necessary but that no additional evidence would be allowed on October 1, 2009 until that decision was made, and that the board might determine on October 1, 2009 whether the conditional use permit was terminated due to non-use.
 11. The board finds that no additional evidence is necessary related to the removal of condition #2 on the variance of July 30, 2009 related to condominium association approval.
 12. The board further determines that there will be no further evidence regarding the termination of Conditional Use Permit #92-9839.
 13. The notice of the public hearing of July 30, 2009 made clear that the zoning department was seeking a possible decision related to the status or termination of that conditional use permit. The time for the TePoels or anyone else to present evidence on this point was July 30, 2009 and they failed to do so.
 14. The letter that the TePoels did send on this issue will be made part of the record already established.
 15. An additional reason why the TePoel letter will not be considered is that it would be unfair to open up this matter for an entirely new public hearing and have the applicants, who live in Crete, Illinois, come back for yet another public hearing when they live some distance from Bayfield County and when they have already been here once on July 30, 2009.
 16. A last reason why the board feels it is not necessary to consider additional evidence at a public hearing is that in a related decision on January 29, 2004 this board granted a variance to Brad Brunner to build a garage. A condition of that variance being obtained was that Mr. Brunner had to agree to a condition of no additional impervious surface and get the condominium association to go along with that condition before his garage was built. This board does not see any way that a mobile home could be add to the condominium area without increasing the impervious surface which would violate the condition previously agreed to.

Decision:

For all of the above reasons the board decides the motion for reconsideration as follows:

1. On its own motion pursuant to Sec. 13-1-102A(h)(2) of the Bayfield County Zoning Ordinance, the board has reconsidered its decision of July 30, 2009 because it would be a manifest error to find that an unnecessary hardship existed but not to grant a variance due to conditions beyond the control of the applicants.
2. Condition #2 of the July 30, 2009 decision is deleted.
3. Based upon the board's interpretation of Sec. 13-1-41(d)(2) of the Bayfield County Zoning Ordinance and the board's previous finding that there had been no mobile homes

on these premises for a much longer time, the board finds that there was no mobile home on the site for well in excess of three years and that the conditional use permit is therefore terminated.

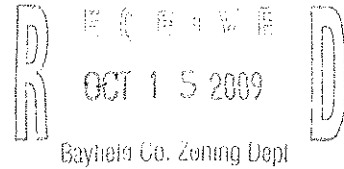
4. In all other respects the decision of July 30, 2009 shall remain in full force and effect.
5. The zoning department is directed to prepare an affidavit referencing the effect of this decision on the conditional use permit in question and record that affidavit at the Register of Deeds office.

Motion made by Phil Lupa, seconded by Randy Matis, to grant the variance with conditions.

MOTION PASSED

VOTE: Yes 4 No 0

Dated: OCT 7, 2009



Randy Matis

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

Also Present: Michael Fauerbach, Attorney for BOA