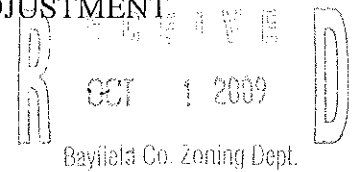


DECISION ON VARIANCE BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

Case #3
September 24, 2009



Jay and Marcy Engstrom are requesting a **variance** from the terms of Section 13-1-40(c)(4)a2 of the Bayfield County Zoning Ordinance. This section requires:

(4) **Additional Requirements for Nonconforming Buildings and Structures on Shoreland Lots.** Except as otherwise provided in paragraphs (4a) and (4b), nonconforming buildings and structures on inland lake lots shall be subject to paragraphs (c)(2) and (3) of this Section, and in addition thereto, principal buildings and structures on such lots of six hundred (600) square feet of enclosed dwelling space or larger shall be subject to the following provisions of this paragraph:

- a. With respect to such structures located less than forty (40) feet from the ordinary high water mark:
 2. 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 seek variance to a non-conforming structure which is 72' from Lake Superior. They wish to replace 92' linear perimeter of footings and foundation; which is in excess of the 25% allowed.

Property is a 8.56-acre parcel (ID# 04-042-2-50-08-30-2-05-002-02000), described as Lot 5 of CSM # 1343, Section 30, Township 50 N, Range 8 W, Town of Port Wing, Bayfield County, WI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The applicants are requesting a variance to a nonconforming structure 72' from Lake Superior. The request for a variance is to allow the replacement of in excess of 25% of the linear perimeter of the building.
2. The variance is required because of Sec. 13-1-40(c)(4)a2. That section requires a variance for a nonconforming building of this sort in a shoreland area.
3. The applicants' home is presently supported by a variety of post and beams that have allowed the house to shift and sag, causing problems with sloping floors and a leaking roof. There is a particular problem with a stone fireplace which is supported, although poorly, by posts and beams.
4. The applicants intend to reconstruct the foundation with cement footings below the frost

line.

5. This is an 8.6 acre parcel.
6. The Town Board recommended approval of the variance.
7. In determining whether this would be an unnecessary hardship the board has considered the fact that the building is only 3' short of the required 75' setback.
8. Mr. Casina testified as follows:
 - a. It would be possible to move the building back 3' but that would also be a land disturbing activity with negative impacts on the resource.
 - b. The shore in this area is not highly erodible nor subject to recession. It is a fairly stable area with 75% bedrock.
 - c. The present building is settling and there is a safety risk to the occupants.
 - d. Mr. Casina discussed the high points of the mitigation plan and indicated that it would involve a restoration of the shoreland and reduction of overland drainage.
 - e. Mr. Casina felt that the plan would not increase the impervious surfaces on the site.
9. Mr. Engstrom testified as follow:
 - a. He would like to fix the fireplace as soon as possible because it is supported by the posts and beams that are a problem.
 - b. He is in agreement with the Lobermeier mitigation plan.
10. The board has considered whether or not a denial of a variance in this situation would constitute unnecessary hardship. The board feels that it would, for the following reasons:
 - a. The individual parcel and the neighborhood in general would be benefitted by saving this building from falling down.
 - b. The preservation of the building will have no adverse effect on the neighbors.
 - c. Assuming that the mitigation plan is complied with the neighborhood will be benefitted and the resource will be protected. In that sense, the entire matter would serve the public interest.
 - d. The board sees no down side to allowance of the variance.

Decision:

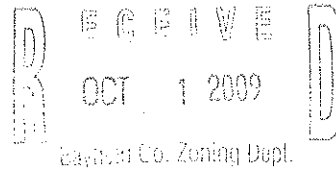
For all of the above reasons, the variance is granted with the condition that the mitigation plan of the Land Conservation Department as written by Mr. Lobermeier would be complied with by not later than November 1, 2010.

Motion made by Randy Matis, seconded by Lee Wiesner, to grant the variance with conditions.

MOTION PASSED

VOTE: Yes 4 No 0

Dated: SEPT. 30, 2009



Randy G. Matis

Members Present: Randy Matis, Phil Lupa, Lee Wiesner and Dennis Rasmussen

Also Present: Michael Fauerbach, Attorney for BOA