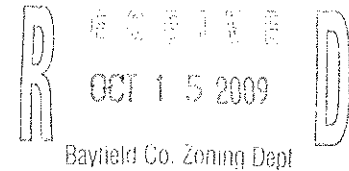


DECISION ON VARIANCE BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

Case #1  
September 24, 2009



**Ronald Tanko** has requested a **variance** from the terms of Section 13-1-40(c)(4) a & b of the Bayfield County Zoning Ordinance. This section requires:

a. With respect to such structures located less than forty (40) feet from the ordinary high water mark:

1. Internal improvements shall be confined to the building envelope and may be constructed without a land use permit.
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.
3. Exterior improvements shall be limited to those which do not change the size or shape of the structure, except that a flat roof may be replaced by a pitched roof, provided that the additional space under the pitched roof may not be used for living area, storage, or other purpose.
4. The mitigation requirements of paragraph (5) below are complied with.

b. With respect to structures located twenty (20) or more feet but less than forty (40) feet from the ordinary high water mark, a life time maximum of one hundred seventy-five (175) square feet of enclosed dwelling space and located on the landward side of the structure, shall be permitted if the resulting structure's resulting height does not exceed twenty-six (26) feet, its footprint does not exceed one thousand five hundred (1,500) square feet, its roof overhang does not exceed one thousand nine hundred (1,900) square feet, its enclosed dwelling space does not exceed two thousand five hundred (2,500) square feet, and a plan meeting all of the following requirements is submitted to and approved by the Bayfield County Zoning Department and is fully implemented and complied with:

1. The septic system shall be upgraded in accordance with COM 83, Wis. Adm. Code, and the Bayfield County Sanitary Private Sewage Ordinance.
2. Water runoff from the structure shall be handled in accordance with best management practices.
3. A shoreline vegetation protection area shall be established and maintained for at least one-half of the distance from the ordinary high water mark to the structure. Any natural vegetation located closer to the structure than one-half the distance from the ordinary high water mark shall also be maintained.

4. The mitigation requirements of paragraph (5) below are complied with.

Applicant wishes to demolish the existing 12' x 20' (240 sq. ft.) garage addition and seek a variance to repair 16' of adjoining foundation wall; construct a 30' x 30' (900 sq ft) two (2) car garage addition on the North side of existing structure; and add a 8.5' x 20.5' (174.25 sq. ft.) deck to the East side of proposed garage. The existing structure is 34.5' from an unnamed navigable stream.

Property is a 0.62-acre parcel (ID# 04-002-2-48-04-07-2 05-002-01000 ), described as N 150' of parcel in Gov't Lot 2 in V. 1017 P. 119, Section 7, Township 48 N, Range 4 W, Town of Barksdale, Bayfield County, WI.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The applicant seeks a variance to demolish the existing 12' x 20' garage addition to the house and repair 16' of adjoining foundation wall. The variance is also sought to construct a 30' x 30' two car garage addition on the north side of the home and add a deck which has been referred to as various sizes in the testimony.
2. The variance from Sec. 13-1-40(c)(4)(a)(3) is required because this would change the size and shape of the structure.
3. The variance from Sec. 13-1-40(4)(b) is required because while the applicant could have 175 more sq. ft. of enclosed dwelling space, the garage is not dwelling space and he would also be over the 1,500 sq. ft. footprint by adding the attached garage.
4. The proposed deck would be on the lake side but would still be 100' from the lake. The existing structure is 34' from an unnamed stream.
5. Zoning & Planning Department employee Travis Tulowitzky testified as follows:
  - a. The structure is 98' from the ordinary high water mark of Lake Superior which would normally require only a 75' setback.
  - b. Mr. Tulowitzky agreed that the structure is 34' from an unnamed stream.
  - c. The north wall of the basement is failing. This is where the garage is located.
  - d. The garage is separating from the house. For adequate repair of that wall the garage would need to be torn down.
  - e. A detached garage would be very difficult to place on the site due to setbacks and the fact that a two car garage would simply not fit well. However, if the applicant were to build a detached garage it would not be subject to the 1500 sq. ft. maximum and would not require a variance, although it might require a special exception regarding setbacks.

- f. Mr. Tulowitzky felt that the most appropriate location for a garage on the parcel is as an attached garage on the landward side, and that is exactly what is proposed by the applicant.
6. The applicant indicated that he is agreeable with the mitigation plan as suggested by Mr. Lobermeier of the Land Conservation Department.
7. The applicant indicated that the house is small, with very little storage. He had considered attic storage and a proposed garage but he cannot go that high with the garage without significant reconstruction of the house.
8. The board has considered whether to deny a variance would create an unnecessary hardship. That standard is whether strict compliance with the restriction governing setbacks in this case would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restriction unnecessarily burdensome. The board feels that there would be an unnecessary hardship based upon that standard in this case.
9. Applying that standard, the board has considered the following:
  - a. This building is obviously in need of repairs and the applicant is willing to spend the money to save the building which would improve the property.
  - b. The neighborhood would benefit if the building was upgraded.
  - c. The purpose and intent of the ordinance is, among other things, to protect natural resources, including lakes and streams. The lake would be particularly benefitted in this case by the mitigation which the applicant has agreed to.
  - d. Because the lake would be protected and the neighborhood upgraded, the board feels that granting this variance would benefit the public interest.
  - e. The house would have a significantly better appearance with the plan proposed by the applicant.

Decision:

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

- a. A new sanitary system as recently permitted would be installed.
- b. The mitigation plan per the Land Conservation Department report of Mr. Lobermeier would be complied with.
- c. The mitigation and sanitary system would be complied with not later than November 1, 2010.

- d. The attached garage would be not larger than 30' x 30' including overhang.
- e. The deck would have a surface area of not greater than 150 sq. ft.
- f. This is a .62 acre lot so there will be a further condition that there be no additional impervious surfaces added.

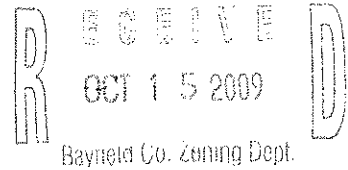
Motion made by Randy Matis, seconded by Philip Lupa to grant the variance with conditions.

MOTION PASSED

VOTE: Yes 4 No 0

Dated: OCT 7, 2009

*Randy Matis*



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

Also Present: Michael Fauerbach, Attorney for BOA