

MAY 07 2010

DECISION ON RECONSIDERATION BY BAYFIELD COUNTY BOARD OF
ADJUSTMENT

April 29, 2010

Thomas & Kristen Sandager, owners have requested an **interpretation** and **variance** from the terms of Section 13-1-40(c)(4)c.7 of the Bayfield County Zoning Ordinance. This section requires: 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 an interpretation and based upon the outcome of the interpretation requests a variance to repair more than 25% of the original foundation.

Property is a 1.8-acre parcel (ID# 04-024-2-47-08-34-2-05-002-06000), located in the Gov't Lot 2, Section 34, Township 47 N, Range 8 W, Town of Iron River, Bayfield County, WI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On January 28, 2010 applicants had a public hearing regarding their request for a variance from Sec. 13-1-40(c)(4)c.7 of the Bayfield County Ordinance. At that time the Board of Adjustment denied the request for a variance because the board felt that there was no unnecessary hardship. At that time the Sandagers did not appear in person or by an attorney, although they had an agent who spoke on their behalf.
2. On March 2, 2010 Attorney Matthew Anich, on behalf of the Sandagers, requested a rehearing, citing numerous reasons for the request for rehearing, including the fact that interpretation of the ordinance should have been sought and had that been done no variance would be required.
3. While the public hearing for this reconsideration continued to reference Sec. 13-1-40(c)(4)c.7 of the ordinance, that ordinance, in fact, did not exist until December 15, 2009. The application for the land use permit in this case was made in late September or early October of 2009. The zoning department's response to that application occurred in early November of 2009.
4. Prior to December 15, 2009 the then existing Bayfield County Ordinance, if it required a variance at all for this foundation, would have required a variance from Sec. 13-1-40(c)(4)c.5. That particular section of the ordinance would have required a variance for any new or raised basement.
5. Board members Wiesner, Kostka, Lupa and Matis are all of the opinion that the foundation the applicant seeks to repair is not a basement but is a crawlspace, and no variance is required.
6. If, however, a dictionary is consulted regarding the definition of "basement" a basement can be interpreted as either the story of a building below the ground floor which clearly

does not apply to this situation, or the substructure or foundation of a building which could, conceivably, apply to this situation.

7. While the above four board members are of the opinion that there is no ambiguity because this clearly is not a basement, if there is an ambiguity the board feels that they would still need to rule that no variance is required. The reason is that when there is an ambiguity in a term in a zoning ordinance the ordinance must be interpreted to favor the free use of land based upon *Cohen v. Dane County Board of Adjustment*, 74 Wis.2d 87, 246 N.W.2d 112 (1976).

Decision:

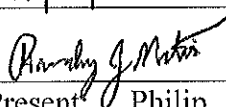
For all of the above reasons the board finds that no variance is required in this case and that the above cited portions of the zoning ordinance pose no legal impediment to the reconstruction of the foundation beneath the pre-existing part of the cabin.

Motion made by Randy Matis, seconded by Philip Lupa to approve the above decision.

MOTION PASSED

VOTE: Yes 4 No 1 (Matis, Lupa, Kostka and Wiesner in favor. Compton opposed).

Dated: May 4, 2010



Members Present: Philip Lupa, Richard Compton, Lee Wiesner, Frank Kostka and Randy Matis

Also Present: Michael Fauerbach, Attorney for BOA