

DECISION ON VARIANCE BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

January 28, 2010

Thomas & Kristen Sandager have requested a **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 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. Applicants seek a variance to allow them to replace a foundation and to bring that foundation up to the Uniform Building Code standard for the State of Wisconsin.
2. The variance requested is from 13-1-40(C)(4)c.7 of the Bayfield County Ordinance which indicates that a replacement of more than 25% of the original foundation is considered a replacement and not allowed for a building that is equal to or greater than 40 feet but less than 75 feet from the ordinary high water mark of a lake.
3. This project started as a two story addition to an existing structure 42 feet from the ordinary high water mark of Hart Lake, a 1.8 acre parcel on that lake.
4. The foundation on the original structure is only about 18 inches below ground level. The building code calls for a foundation to be 48 inches below grade or below frost, whichever is lower.
5. The board has considered all of the testimony and evidence presented, including Exhibits A1 through A9. The board has also considered the Town Board recommendation.
6. The applicants' contention is that the problems with the existing foundation have caused some shifting of the floor and the applicants are concerned that additional structural problems could present themselves. The settlement or movement of the foundation was made to be more of a problem than it otherwise would have been because the applicants attached the existing foundation to a UDC compliant foundation which would have been more stable.
7. Assistant Zoning Administrator Casina testified as follows:
 - A. The house sits on the cusp of a ridge, and that ridge parallels the shoreline of Hart Lake.
 - B. The land drops off somewhat behind the house in an easterly direction.
 - C. There would be some difficulty in moving the house back beyond the 75 feet, due to these topographical features.
8. Lorin Wicklund is a contractor working for the applicants who testified to some of the processes that have occurred and the construction that has already occurred. The new addition has been started to the extent of building a 20' x 24' x 8' basement.
9. There was testimony from Zoning & Planning Administrator Karl Kastrosky about an

- amendment to the ordinance that made the 25% limitation on foundations as related to a building more than 40 feet from the ordinary high water mark explicit and that ordinance change occurred in December 2009.
10. However, Mr. Wicklund admitted that the applicants were aware of the 25% limitation on the foundation before that change in the ordinance occurred and basically decided that they were going to “worry about it later”.
 11. It is true that the ordinance was changed in December 2009 after the permit was issued for this project. However, before that change there was already a general prohibition in part 5 of the same section of the ordinance. That general prohibition was against new or raised foundations and the board finds that this certainly was a new foundation.
 12. The board also finds that this building could be relocated beyond the 75 ft., setback without losing sight of the lake. This finding is made not only based upon testimony from Mr. Wicklund but by the fact that an addition has already been started that is partly beyond that 75 ft., setback limit.
 13. After looking at the exhibits again, the board finds that a portion of the new addition was beyond the 75 ft., setback.
 14. The board has considered that the basement for the new addition has been put in and that it could create some expense to move it. The board can consider economic factors in these situations but they should not be the primary consideration.
 15. The board finds that the additional expense would be a self-created hardship because the applicants were aware of this situation before the new foundation was put in.
 16. The board has considered the unnecessary hardship standard for a variance and understands that that standard is applied in terms of whether or not compliance with the strict letter of the setback would unreasonably prevent the owner from using the property for a permitted purpose or render conformity with such restriction unnecessarily burdensome. The board feels that upon consideration of all the evidence, including the topography and the other reasonable alternatives, the unnecessary hardship standard has not been met.
 17. In applying that standard the board has considered the purpose of the zoning restriction in question which, in part, is designed to protect Hart Lake.
 18. The board has also considered the effect of the variance on the property and the effect on the neighborhood in general.
 19. The board feels that the larger public interest requires that the request for a variance be denied.

Decision:

For all of the above reasons, the request for a variance is denied.

Motion made by Richard Compton, seconded by Dennis Rasmussen, to deny the variance for the reasons cited above.

MOTION PASSED

VOTE: Yes 3 No 0

Members in favor: Dennis Rasmussen, Philip Lupa, Richard Compton
Opposed: 0

Dated: 02-03-2010

Phillip T Lupa

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Members Present: Dennis Rasmussen Philip Lupa, Richard Compton
Village Co. zoning Dept

Also Present: Michael Fauerbach, Attorney for BOA