

JUL 02 2010

DECISION ON VARIANCE BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

Case 2
June 24, 2010

Robert & Karen Hansen are requesting a **variance** from the terms of Section 13-1-40(c)(3)c. of the Bayfield County Zoning Ordinance. This section states: Except as provided in paragraph (4)d., the lifetime total of all expansions shall not exceed fifty percent (50%) of the structure's footprint that existed at the time the structure became nonconforming; an owner shall provide documentation of the footprint of a structure at the time it became nonconforming, and any expansion shall be documented by recorded affidavit;

Applicants seek a variance to exceed the 50% allowable limitation over the life of the structure (expansion(s) to date =103%). The applicants wish to construct a 12' x 26' (312 sq. ft) 1-story addition to their non-conforming structure (due to being 20' from right-of-way of US Hwy 2).

Property is a 1.50-acre parcel (ID# 04-020-2-47-05-19-2-01-000-20000), described as that part of the E1/2 of the NE1/4 of the NW1/4 (fused to a 14-acre parcel (ID# 04-020-2-47-05-19-2-01-000-30000), Section 19, Township 47 N, Range 5W, Town of Eileen, Bayfield County, WI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Robert and Karen Hanson request a variance to facilitate an addition on their home. The planned addition would be one story and consist of 312 square feet.
2. The home is a nonconforming structure 20 feet from the right-of-way of U.S. 2. The standard setback from the right-of-way would be 50 feet.
3. Due to this nonconformity, Sec. 13-1-40(3C) requires that the lifetime totals of all expansions would not exceed 50% of the footprint at the time the structure became nonconforming. In this case there are existing expansions that total 103%. Those additions include the following:
 - A. 1983, 112 square foot addition to the residence.
 - B. 1992, 360 square foot addition for a bedroom.
 - C. 1993, 220 square foot deck.
 - D. 2001, 320 square foot deck.
4. Mr. Tulowitzky from the zoning department testified that it was not at all clear that the applicants had ever been informed prior to 2001 that the structure was nonconforming. Only the 2001 paperwork suggested that the nonconformity had at that time been identified.
5. Applicant Robert Hanson testified that he was not aware at all that this was a nonconforming structure until 2001 and even then a permit for the deck was issued without any type of variance.
6. Mr. Tulowitzky also testified that there was no recorded affidavit regarding any variance or nonconformity.
7. There is no shoreland or wetland issue involved in this case. There is a navigable stream but it is well beyond the required 100 foot setback.
8. The board has carefully considered whether or not there is any particular safety issue in this case and for reasons that will be stated below the board finds that there is no safety

- issue, regardless of whether or not the variance is granted.
9. The board has considered the applicable standard for an area variance. That standard is unnecessary hardship and an unnecessary hardship exists when compliance with the strict letter of the restriction governing the setback would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restriction unnecessarily burdensome.
 10. In applying that standard the board has considered the purpose of the zoning restriction in question. In this case the board feels that the major reason for the setback requirement is one of safety. Houses should not be too close to highways. The right-of-way in this case is a very wide right-of way totaling 200 feet. The board finds that the house in question is a reasonable distance from the actual traveled portion of the highway. The board also notes that there are varying widths of this particular right-of-way even close to where the applicants' house is. The width of the right-of-way in areas farther from the applicants' house are more narrow.
 11. Perhaps most importantly, the board has determined that if this variance is granted there would be no further encroachment on the right-of-way. The requested addition is on the opposite side from the right-of-way.
 12. The board also thinks that it is noteworthy that there is no shoreland or environmental problem that would be caused by this addition. For that reason the property itself would not be adversely affected.
 13. The effect of this variance on the neighborhood would not be negative, that the board can determine.
 14. As a whole the board feels that the granting of the variance in this case would meet the larger public interest.

Decision:

For all of the above reasons the variance is granted with the condition that there be no further additions on this particular building and no further variances on the entire property.

Motion made by Frank Kostka, seconded by Phil Lupa, to approve the variances with conditions.

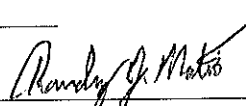
MOTION PASSED

VOTE: Yes 4 No 0

Dated: June 30, 2010

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Members Present: Frank Kostka, Philip Lupa, Lee Wiesner, and Randy Matis
Also Present: Michael Fauerbach, Attorney for BOA