

DECISION ON VARIANCE BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

Case 1

March 25, 2010

Richard Minkley has requested a **variance** from the terms of Section 13-1-40(c)(4)a.3. of the Bayfield County Zoning Ordinance. This section requires: 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.

Applicant seeks variance to construct a (20' x 14') 280 sq. ft. addition to the existing 864 sq. ft. non-conforming structure located 18' from the ordinary high water mark of Cable Lake.

Property is a 20-acre parcel (ID# 04-012-2-43-07-07-2-05-001-20000), located in part of Gov't Lot 3, Section 7, Township 43, North, Range 7 West; and a 1.30-acre parcel (ID# 04-012-2-43-08-12-1-05-002-50000), located in part of Gov't Lot 2, Section 12, Township 43 N, Range 7 W, Town of Cable, Bayfield County, WI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicant seeks a variance from the terms of the ordinance related to improvements to nonconforming structures of greater than 600 square feet.
2. The existing cabin is 864 square feet and is located only 18 feet from the ordinary high water mark of Cable Lake.
3. Applicant seeks to build a 280 square foot addition on the landward side, approximately 55 feet from the ordinary high water mark.
4. The current building has two bedrooms on the second floor with access by a steep staircase.
5. The Town Board has recommended that this variance not be granted because it does not fit the land use plan and because the cabin is only 18 feet from the ordinary high water mark.
6. Applicant's claim of unnecessary hardship is based upon the fact that the applicant says he has a chronic, progressive, degenerative back condition, other orthopedic problems, and he may need an artificial knee at some point in the future.
7. This parcel totals 21.22 acres. The applicant indicates that it would be very difficult to move the structure because of issues related to topography and the building.
8. The board, in making its decision, is not ignoring the claim of degenerative back problems but the unnecessary hardship analysis relates to the special characteristics of the land, not the applicant.
9. The board also notes that there were no medical reports or records of any kind presented and that there was not strong evidence of specific medical problems.
10. The board finds that there are other code compliant locations on this 20 acre site. The board has considered that the construction and age of the building may make it difficult to move. However, the structure is on blocks that supports the joists. Also, while it is not clear that the building could be easily moved far enough back to meet the 75 foot setback, it could certainly be moved significantly farther back than 18 feet.

11. In making its decision the board has also considered testimony regarding the varying levels of development related to the adjacent parcels.
12. Based upon all of the above information, including all the documentary information in Exhibit A-1, the board finds that the standard of unnecessary hardship has not been met. When considering that standard of unnecessary hardship the board has considered whether compliance with the strict letter of the setback requirement would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with the restriction unnecessarily burdensome.
13. In applying that standard the board has considered the purpose of the zoning restriction in question, which is to protect natural resources such as the lake which is only 18 feet away from this cabin.
14. The board has also considered the effect on this particular property, and again, the building is only 18 feet from the lake and is quite an old building.
15. The board has also considered the effect of a possible variance on the neighborhood and other lake lot owners.
16. The board has also considered the larger public interest related to protection of this lake and other landowners that may wish to develop property this close to a body of water.

Decision:


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

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

MOTION PASSED

VOTE: Yes 4 No 0

Dated: 30 March 2010



Members Present: Dennis Rasmussen Philip Lupa, Richard Compton, and Randy Matis

Also Present: Michael Fauerbach, Attorney for BOA

