



DECISION ON VARIANCE BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

Case 3
October 28, 2010

Judith Jacobs is requesting a **variance** from the terms of Section 13-1-60(a), row 1, column 5 and Section 13-1-22(b), row 3 of the Bayfield County Zoning Ordinance. Section 13-1-60(a) states:

| | | Minimum Average Width for | Minimum Side & Rear Yards |
|-----------------|----------------|---------------------------|--|
| Zoning District | Minimum Area | Non-Shoreland Lots Only | Principal Building Accessory Building |
| R-RB, R-1 | 30,000 sq. ft. | 150' | 10'10' |

Section 13-1-22(b), row 3, columns 2 & 3 which states: setback from Town Road is 63' from centerline or 30' from right of way, whichever is greater.

Applicants seek to construct a 24' x 24' (576 sq. ft) garage 7' from South property line and 15' from centerline of Lake Avenue.

Property is a .20-acre parcel (ID# 04-034-2-43-05-07-3-00-229-13000) described as Lot 4, Namakagon Village, Section 7, Township 43 N, Range 5 W, Town of Namakagon, Bayfield County, WI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The applicant requests a variance from the terms of the ordinance for the construction of a 24' x 24' garage 7' from South property line and 15' from centerline of Lake Avenue.
2. Sec. 13-1-22(b) row 3, columns 2 & 3 which states: setback from Town Road is 63' from centerline or 30' from the right of way.
3. Sec. 13-1-60(a) states that the minimum side and rear setback for an accessory building is 10'.
4. The town board recommends approval of the variance and indicates that it meets the terms of the comprehensive plan.
5. Mr. Furtak testified on behalf of the Planning and Zoning Department, as follows:
 - A. As the right-of-way now exists for this town road there are number of buildings that are actually in the right-of-way.
 - B. This is a problem that the zoning department has been working on for approximately two years.
 - C. Mr. Furtak would like to see the variance conditioned on the town board vacating a portion of this town road.
 - D. According to Mr. Furtak there is really no other good place for a garage on this

- small lot. It is only .2 acres.
- E. Moreover, it would be beneficial to have the garage on this particular location because it is a paved, impervious surface and although that would have to be removed to facilitate the garage, it would not be increasing the impervious surface significantly.
- F. This is a congested neighborhood with very small lots.
6. David Reichert testified in favor of the variance. He is with Camp David Realty which is involved in the sale. The sale is contingent upon the variance being granted.
 7. The proposed buyer, Duane Koenen, also testified that the sale was contingent upon the garage being purchased. This is an issue that has come up with a number of buyers.
 8. The well and septic has been replaced in order to facilitate the sale.
 9. The board has considered whether an unnecessary hardship would exist if the variance were not granted. "Unnecessary hardship" is best explained as whether compliance with the strict letter of the restriction (here setbacks) in the zoning code would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with the restriction unnecessarily burdensome. The board finds that the unnecessary hardship test has been met.
 10. With the shoreland mitigation plan in place the board feels that the purpose of the ordinance to protect natural resources would be met. Also, the planned location would minimize additional impervious surface.
 11. The construction of the garage would benefit this particular parcel.
 12. The construction of the garage and the vacation of part of the town road to facilitate other neighboring properties not encroaching on the road would benefit the entire neighborhood.
 13. Resolution of this problem with the town road would serve the larger public interests, as would the mitigation plan.
 14. Duane Koenen agrees with all of the conditions in Mr. Tulowitzky's report. He also is agreeable to having the siding on the garage match that of the house.

Decision:

For all of the above reasons the variance to allow the garage in the proposed location is granted with the following conditions:

1. The Town of Namakagon will vacate the portion of the town road to make the proposed placement of the garage workable.
2. The shoreland mitigation plan of Travis Tulowitzky on behalf of the Bayfield County Land and Water Conservation Department will be complied with in its entirety.
3. The garage may have a second story but it will not allow for any human habitation.
4. The garage will have the same siding with the same color as the existing home.
5. There will be no further building or development on the property at any time, ever.
6. All conditions of the variance will be complied with by October 1, 2011.

Motion made by Richard Compton, seconded by Phil Lupa, to approve the variance with conditions.

MOTION PASSED

VOTE: Yes 5 No 0

Dated: Nov. 4, 2010

Randy Matis

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

Also Present: Michael Fauerbach, Attorney for BOA