

DECISION ON VARIANCE BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

Case 1
October 28, 2010

Don & Debra Sesko, owners and Jim Beauto, agent are requesting an **interpretation** of Section 13-1-4(70) of the Bayfield County Zoning Ordinance. Section 13-1-4 (70) states: *Unit.* A principal building or part thereof which is intended to be used separately from other parts of the building or other buildings on the same property, such as a six unit motel containing four (4) rental units, one (1) office and a restaurant.

Based on the interpretation the owners and agent are requesting a **variance** from the terms of Section 13-1-32(e)(1), row 1, column 1 and Section 13-1-65(e), row 1, column 1 of the Bayfield County Zoning Ordinance. Section 13-1-32(e)(1), row 1, column 1 states:

	Class 1 Lakes, Lake Superior
Shoreline Frontage	50 feet per unit; 600 feet minimum

Section 13-1-65(e), row 1, column 1 states:

	Class 1 Lakes	Class 2 Lakes	Class 3 Lakes Rivers, Streams
Shoreline Frontage	150 feet per unit; 600 feet minimum	200 feet per unit; 800 feet minimum	300 feet per unit; 1,200 feet minimum

Applicant seeks a variance to redevelop the existing Boulder Lodge Complex by phasing out the campground. They wish to construct a new conforming residential structure. This development will exceed the density provisions of the above mentioned Sections. The existing property has 239.76 of shoreline frontage instead of the 600' required and the Town of Barnes Overlay only allows 1 dwelling unit per 150' with 600' minimum shoreline frontage.

Property is a 7.67-acre parcel (ID# 04-004-2-44-09-18-1-05-001-202000), located in part of Gov't Lot 1 N 300' less parcel in NE corner in V.155 P. 109, and a 2.816-acre parcel (ID# 04-004-2-44-09-18-1-05-001-03000), described as part of Gov't Lot 1, S 100' of N 400' in V. 816 P. 762, Section 18, Township 44 N, Range 9 W, Town of Barnes, Bayfield County, WI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicants seek a variance related to the redevelopment of the Boulder Lodge campground and the phasing out of the campground.
2. The plan is for five people or couples to buy the complex contingent upon a variance being issued to allow the construction of an additional single family residence which would be beyond the applicable density limits for a multiple unit development.
3. The board is first asked to determine if the existing campground is a single unit within the meaning of Sec. 13-1-4(70).
4. That section provides as follows: "Unit. A principle building or part thereof which is intended to be used separately from other parts of the building or other buildings on the

- same property such as a six unit motel containing four rental units, one office and a restaurant.”
5. The board finds that that definition of “unit” is very ambiguous as applied to a campground. The term “unit” could also conceivably be used to describe individual campsites but the board feels that is not the appropriate definition. Because there is ambiguity the board feels that they must adopt the interpretation that favors the freer use of property based upon the case of *Cohen v. Dane County*. The board also feels that there would be many other problems that would be caused by interpreting individual campsites as units and that it would have the effect of making virtually all campsites in Bayfield County nonconforming.
 6. Because there are three existing cabins plus the bar/lodge the campground would make a total of five units. The construction of an additional residence would require a variance because this Class 1 lake is also affected by the Barnes Overlay which requires 600 feet of shoreline and 150 feet of shoreline per unit. In this case there is somewhere between 240 and 270 feet of shoreline, based upon testimony at the hearing.
 7. The applicants’ variance request is to build a structure of not more than 2500 square feet and a 28’ x 34’ detached garage not closer than 400 feet from the ordinary high water mark of the lake. The time that the construction will occur is uncertain but it might be as late as 2015, according to the applicants’ plans.
 8. The board has considered all of the evidence in Exhibit A1 as well as the testimony.
 9. The board has also considered that the town has recommended approval, both the board of the Town of Barnes and the Town of Barnes Planning Commission as well as the Eau Claire Area Lakes Property Owners Association.
 10. In determining whether a variance should be granted the board must determine whether or not there has been an unnecessary hardship. “Unnecessary hardship” is best explained as whether compliance with the strict letter or restriction governing density would prevent the owner from using the property for a permitted purpose or render conformity with the restriction unnecessarily burdensome. The board finds that the unnecessary hardship test has been met.
 11. In reaching that conclusion the board has considered the purpose of the ordinance and the board feels that a significant purpose of the ordinance is to protect natural resources, including the lake. The lake would be greatly benefitted by elimination of the campground, and particularly by the elimination of the boat landing. The evidence was that the boat landing, in effect, acts as an erosion and runoff funnel into the lake and its removal would greatly benefit the lake.
 12. The board feels that the redevelopment of this complex as proposed would not only benefit this parcel but the entire neighborhood.
 13. The board also finds that with the elimination of the campground and boat landing there would be a situation where the larger public interest would be served and the service of the larger public interest would be increased by the other mitigation and stormwater management proposals in the Travis Tulowitzky report of October 15, 2010.

Decision:

For all of the above reasons the variance is granted for construction of a single family dwelling, with the following conditions:

1. The residence would be 400' or more from the ordinary high water mark of the lake. It would not exceed 2500 square feet including overhangs. A 28' x 34' garage would also be allowed.
2. All of the provisions of the mitigation plan of Travis Tulowitzky dated October 15, 2010 would be complied with except that 85' of lakeshore would not be subject to restoration and revegetation and all boat docks and boat storage would occur within that 85' area.
3. The bar would be closed when the purchase by the new owners is completed.
4. The campground would be phased out and all physical improvements would be removed from the campground not later than January 1, 2016.
5. The dumpsters would be moved back from the lake at least 100' and fenced in.
6. The outhouse and old metal shed would be removed.
7. The fire ring and night lighting would be removed.
8. The boat landing would be restored as soon as possible but not later than September 1, 2011.
9. All other conditions except the closing of the bar and campground would be done not later than September 1, 2011.
10. There would be a code compliant septic system for all units.
11. There would be no permit issued for the new residence or garage until all conditions have been met and the campground was removed, including all physical improvements.

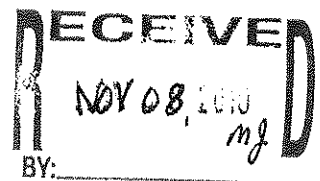
Motion made Randy Matis, seconded by Phil Lupa to approve the variance with conditions.

MOTION PASSED

VOTE: Yes 5 No 0

Dated: Nov. 4, 2010

Randy Matis



Members Present: Frank Kostka, Philip Lupa, Tony Johanik, Randy Matis and Richard Compton

Also Present: Michael Fauerbach, Attorney for BOA