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Bayfield Co. Zoning Dept.

Decision on Variance
By Bayfield County Board of Adjustment

November 17, 2011

Kimberly Suske is requesting a **variance** from the terms of Section 13-1-40(c)(4)c 5 and 7 of the Bayfield County Zoning Ordinance. Subsection 5 states: No new or raised foundation for the existing structure or any attached accessory structure shall be permitted, though a foundation may be constructed under a permitted lateral addition; and Subsection 7 states: Repair of 25% or more of the lineal perimeter of the foundation shall be considered a replacement or new foundation and not a repair.

Applicant seeks an after-the-fact variance to replace 100% of the existing stone foundation with a complete new block basement to the 2-story (30' x 38') residence with an attached 8' x 8' deck and 5' x 7' porch.

Property is 17.07-acre parcel (ID#s 04-008-2-49-04-29-1-00-100-17000; 04-008-2-49-04-29-1-00-100-19000; 04-008-2-49-04-29-1-00-100-24000; 04-008-2-49-04-1-00-100-25000; 04-008-2-49-04-29-1-00-100-27000, & 04-008-2-49-04-29-1-00-100-28000), described as the S 198' of Lots 21, & 22 and the N 214.5' of Lots 27 & 28, and the N 165' of the S 412.5' of Lots 27 & 28, all in AA Bigelow & Co Subdivision, Section 29, Township 49 N, Range 4 W, Town of Bayview, Bayfield County, WI.

Findings of Fact and Conclusions of Law:

1. Applicant seeks a variance from Section 13-1-40(c)(4)c5 and 7 of the Bayfield County Zoning Ordinance.
2. Subsection 7 of that ordinance provides that the repair of 25% or more of the linear perimeter of the foundation on nonconforming structures shall be considered a replacement and not a repair.
3. Applicant seeks an after the fact variance to replace the entire stone foundation with a new block basement on this two story house.
4. Applicant purchased the home in August of 2011 and was confronted with problems related to a 100+ year old stone foundation that was crumbling and in need of repair. There was also mold and moisture problems in the basement.
5. Applicant approached the zoning department and she was told that she did not need a permit or variance. The board finds that throughout this matter the applicant has acted in good faith reliance upon information originally given to her by the zoning department.
6. Later, after the basement was 90% complete, the applicant was informed that there was

an intermittent stream 44 feet from the north side of the house and that a variance was needed.

7. Pictures of the intermittent stream that are part of Exhibit 1 show that at least at the time the pictures were taken there was no water and that both sides of the stream were heavy with natural vegetation.
8. The intermittent stream in question does not appear likely to provide either fish habitat or recreational opportunities, but the DNR has at some point determined that the stream is, in fact, navigable. The DNR takes no position on this variance, according to Mr. Kastrosky. The applicant indicated that during construction there was no runoff or dirt or construction materials that got to the stream bed.
9. The town board recommended that the variance be granted.
10. The applicant's two page request for variance that is part of Exhibit A1 is factually accurate, according to Mr. Kastrosky.
11. Mr. Kastrosky felt that even if this variance had been applied for in a timely manner it would be an appropriate situation for a variance, and the board agrees with that conclusion.
12. Mr. Kastrosky also considered the possibility of moving the structure as an alternative to the variance but due to the existence and location of various infrastructure, including septics, wells and driveways, it did not appear to him to be a reasonable alternative to move the structure.
13. At least three neighbors have expressed their support. This includes neighbor Greg Magnuson who appeared at the hearing and was supportive. There were no neighbors that expressed opposition to the variance. Mr. Magnuson felt that the installation of the new foundation would be a benefit to the entire neighborhood.
14. The board has considered the fact that the zoning department initially gave incorrect information and the board has also considered a new case that has dealt with that issue, *Accent Developers v. City of Menominee*, 2007 Wis. App. 48.
15. The board has considered the applicable standard for variance, that is, whether an unnecessary hardship would exist. In this context "unnecessary hardship" is best explained as whether compliance with the strict letter of the restriction governing setbacks would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with the restriction unnecessarily burdensome.
16. The board has determined that this standard is met. The purpose of the zoning restriction in question is to protect navigable waterways, including this intermittent stream, but there

was testimony that the stream has not been adversely affected by this building project.

17. The board has also considered the effect of the variance on this property, and it would help preserve a 100+ year old home.
18. The board has considered the effect of the variance on the neighborhood, and the neighbors are supportive and feel that it would improve the neighborhood.
19. The board has also considered the larger public interest, and believes that it would be met by this particular variance.

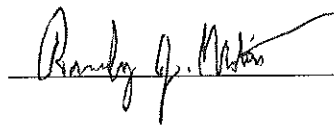
Decision: For all the above reasons the request for a variance is granted. As a condition of this variance the applicant will see to it that all bare ground is seeded.

Motion made by Lupa, seconded by Kostka to grant the variance.

MOTION CARRIED

VOTE: Yes 5 No 0

Dated: 23 Nov. 2011



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Bayfield Co. Zoning Dept.

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

Also Present: Michael Fauerbach, Attorney for BOA