

R E C E I V E D
SEP 06 2011

Bayfield Co. Zoning Dept.

DECISION ON VARIANCE BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

Case 2
August 25, 2011

Charles & Mary Spoden are requesting a **variance** from the terms of Section 13-1-22(b) and Section 13-1-22(f) of the Bayfield County Zoning Ordinance. Section 13-1-22(b) states:

(b) **Highway Setbacks.**

Class of Highway	Setback Front Centerline	Setback from Right of Way Line
State & Federal	110'	50', whichever is greater
County	75'	42', whichever is greater
Town	63'	30', whichever is greater

Section 13-1-22(b) states:

(f) **Wetlands.** No structure shall be constructed or placed within 25 feet of a mapped wetland two acres or greater in area.

Applicants seek a variance to construct a 1-story (22' x 24 = 528 sq. ft.) garage 33' from Town Road (Big Pete) and 10' from a mapped wetland.

Property is a 3.0-acre parcel (ID# 04-042-2-50-08-21-4-05-001-50000), described as 3 acres in the SW corner of the SE ¼ of the SE ¼, Section 21, Township 50 N, Range 8 W, Town of Port Wing, Bayfield County, WI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicants request two separate variances to build at less than normal setbacks.
2. Applicants want to build a 528 sq. ft., one story garage 33 ft., from a town road and 10 ft., from a mapped wetland.
3. The normal required setbacks would be 25 ft., from the mapped wetland and 63 ft., from the center of the town road.
4. This is a three acre parcel zoned Forestry -1. However, more than two acres of the parcel are wetland.
5. This wetland situation constitutes a unique physical feature of the parcel.
6. There was a prior variance to build the house related to setback from the road and the lot boundary.

7. Due to the wetlands, there is a limited buildable core. The primary building, the house or cabin site, takes up the great majority of that buildable core.
8. There is presently no other garage or outbuilding on the site.
9. The Town Board recommended approval of this variance request and considered its compatibility with the comprehensive plan.
10. There was one letter from a neighbor supporting the variance request.
11. Doug Casina from the Zoning & Planning Department testified as follows:
 - A. The Spodens have direct access from Big Pete Road. The road gets very little use. The dwelling density in the area is low, with adjoining land owned by the Department of Natural Resources.
 - B. There was a prior variance for the main building but there was no prior limitation on future variances or development.
 - C. The hardship in this case is not self-created but is based solely on the wetlands features.
 - D. The garage would not be detrimental to either the neighbors or the general public welfare.
 - E. The proposed site as shown on the drawings is deceptive, but the site that is proposed by the applicant has been reviewed by Mr. Casina who believes this would be the site that would cause the most minimal impact to the wetland.
12. The board has considered all of the materials in the packet Exhibit B-1 and also an additional photo offered by Mr. Casina, Exhibit B-2.
13. Applicant Chuck Spoden testified that since purchasing the property they have done much to improve its appearance and Mrs. Spoden is now a permanent resident.
14. Mr. Spoden also testified that there is very minimal traffic on Big Pete Road, and the road is not even plowed in the winter much past his residence.
15. Mr. Spoden also indicated that the plan was for the garage doors to open in a direction different than toward the town right-of-way.
16. Mr. Spoden also indicated no objection to a condition of no further buildings on the site.
17. The board has considered whether it would be an unnecessary hardship if the variance was not granted, and the board finds that it would be. In applying the unnecessary hardship standard the board has considered whether compliance with the strict letter of the restriction governing in this case setbacks would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with the restriction unnecessarily burdensome.

18. The board finds that it would unreasonably prevent the owner from using the property for a permitted purpose and to not allow a garage under these circumstance would be unnecessarily burdensome.
19. In applying this standard of unnecessary hardship the board has looked at the purpose of the zoning restriction in question which, in this instance, is to protect the wetlands and also provide safety related to the town right-of-way.
20. The board finds that the wetlands can be adequately protected with certain conditions that will be applied.
21. The board also finds that the safety related to the town right-of-way can be insured, particularly given the fact that this is a town road with very little use.
22. The board has considered the effect of the variance on the property of the applicants and finds that it would not cause any significant negative impact.
23. The board has also considered the effect of the variance on the neighborhood and, based on Mr. Casina's testimony, believes that there would be no significant negative impact.
24. For the same reason, the board finds that granting of the variance would respect the larger public interest.

Decision:

For all of the above reasons both variances are granted, with the following conditions:

1. The doors to the garage may not open toward the town roadway but will be on the 22 ft., long side of the building facing northwest.
2. The garage will not infringe in any way on the 66 ft., right-of-way.
3. The eave line of the garage will not exceed 22 ft., x 24 ft.
4. There will be no buildings in the future on the premises that would require a variance.
- f. In construction of the garage, silt fence and minimal soil disturbance procedures will be utilized.

Motion made by Frank Kostka, seconded by Richard Compton to approve the variance.

MOTION PASSED

VOTE: Yes 5 No 0

Dated: August 31, 2011

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SEP 06 2011

Randy G. Matis

Bayfield Co. Zoning Dept.

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