

Decision on Variance
By Bayfield County Board of Adjustment

Case No. 1
April 26, 2007

Rick & Pam Ruegger, owners, and James Kerkow, agent, have requested a variance from the terms of Section 13-1-40(c)(3) a & d of the Bayfield County Zoning Ordinance. Section 13-1-40(c)(3)a & d state:

Nonconforming Principal Buildings and Structures of 600 Square Feet or Larger. Except as further restricted by the provisions of paragraph (4) below, nonconforming principal buildings and structures of 600 square feet or larger may be improved internally, externally, or expanded provided that:

- a. A structure that is nonconforming as to structural or dimensional standards may not be expanded or enlarged so as to increase its dimensional nonconformity.
- d. The structure may not be substantially reconstructed by replacement of exterior walls constituting more than twenty-five percent (25%) of the perimeter of the structure over the life of the structure. The owner shall provide documentation of the perimeter of the structure at the time this provision took effect and any reconstruction shall be documented by recorded affidavit.

Applicants request to replace more than 25% of the linear perimeter of the existing structure and increase the road setback non-conformity by 4 feet to enlarge the bedrooms and bathroom.

Property is described as a 1.36-acre parcel (ID# 034-1059-09) and 034-1060-02-990, located in Gov't Lot 2, Section 10, Township 43 N, Range 6 West, Town of Namakagon, Bayfield County, WI.

Findings of Fact and Conclusions of Law:

1. Applicants seek two variances. First, a variance to replace more than 25% of the linear perimeter of this lake home; second, a variance to increase the road setback nonconformity by an additional 4 ft.
2. This is a non-conforming structure of more than 600 sq. ft., and as such you may not increase the linear perimeter by more than 25% based upon Sec. 13-1-40(c)(3)(a) and (d) of the Bayfield County Ordinance.
3. This structure is also non-conforming because it is 50 ft., from the town road. The normal setback from the town road would be 63 ft. from the center of the road or 30 ft. from the right-of-way based upon Sec. 13-1-22(b).
4. The Town Board recommended approval of the variance.
5. The lot size is 1.36 acres. However, Mr. Furtak from the Zoning Department indicated that some of this is wetland and it is also fairly close to the lake.

6. In fact, the building is very close to the lake, being only 25 ft. from the ordinary high water mark, based upon the application.
7. Mr. Furtak also indicated that it would be difficult to move the building to any place else on the lot due to setbacks and also due to a septic tank to the north of the building.
8. From a safety standpoint and related to the road setback issue, there is an approximate 10 ft. elevation of the location of the house above the road bed.
9. Mr. Furtak also indicated that there was a storm water management and mitigation plan as part of the packet (Exhibit 1).
10. The evidence of an unnecessary hardship was extremely limited. Basically, there was testimony from Mr. Kerkow that the family had a large home on the adjoining property and that this building would essentially just be used for an overflow.
11. The board also considered that this lot is conforming, although the building is non-conforming so if a variance were granted the increased non-conformity of the building could be sold to another party separately from the larger parcel.
12. The board finds that there was really no other evidence of hardship other than the fact that this was a large family that wanted more room in this second home.
13. The application indicates that the non-conforming structure already has two bedrooms and a bathroom.
14. The board finds that the applicant has failed to meet its burden of showing an unnecessary hardship. In determining whether there was an unnecessary hardship the board considered whether compliance with the strict letter of the ordinance would unreasonably prevent the owner from using the property for a permitted purpose or render conformity with the restrictions unnecessarily burdensome. The board finds that burden has not been met.
15. In determining that the burden of unnecessary hardship has not been met the board has considered the purpose of the zoning restriction in question, including the control of development so close to a lake.
16. The board has also considered the effect of a variance on this property on the neighborhood surrounding it and on the larger public interest.

Decision: For all the above reasons the request for a variance is denied.

Motion made by Compton, seconded by Lupa to deny the variance.

MOTION CARRIED

VOTE: Yes 4 No 0

Dated: _____

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

Also Present: Michael Fauerbach, Attorney for BOA