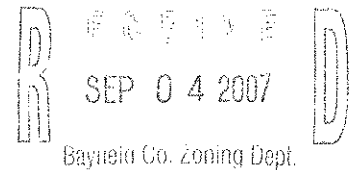


Decision on Variance
By Bayfield County Board of Adjustment



Case No. 1
August 30, 2007

Terry L. Chappelow is requesting a variance from the terms of Section 13-1-26(a) & (c). These sections require:

(a) Substandard Lots of Record Prior to April 20, 1971. A substandard lot of record in the Bayfield County Register of Deeds Office prior to April 20, 1971, which is not served by a public sanitary sewer and which is at least 10,000 sq. ft. in area, 65 ft. in width at the building line, and 65 ft. in width at the water line, or which is served by a public sanitary sewer and is at least 7500 sq. ft. in area, 50 ft. in width at the building line, and 50 ft. in width at the water line, may be used as a building site if it meets the following requirements:

- (1) The proposed use of the site is permitted in the zoning district in which it is located.
- (2) All applicable setback requirements of this ordinance and all provisions of the Bayfield County Sanitary and Private Sewage Ordinance are complied with.

(c) **Other Substandard Lots.** A building permit for the improvement of a lot having lesser dimensions than those described in subsections (a) and (b) above shall be issued only after the granting of a variance by the Board of Adjustment.

Applicant wishes to construct a 24' x 40' (960 sq. ft) residence with loft and attached garage on a 7,000 sq. ft area served by a public sewer. Property is a 0.16-acre parcel (ID# 014-1104-02) described as Lot 1, Block 5, Plat of Orchard City, Section 8, Township 50 N, Range 7 W, Town of Clover.

Findings of Fact and Conclusions of Law:

1. Applicant seeks a variance to construct a 24' x 40' (960) sq. ft.) residence, including attached garage, on a substandard lot of record.
2. The lot is substandard because it has an area of 7,000 sq. ft., rather than 7,500 sq. ft., as required by 13-1-26(a) and a variance is therefore required.
3. There are many small lots in this area which is the Plat of Orchard City.
4. The site is served by public sewer.
5. The evidence was unanimous that without a variance there is very little or nothing that could be done with this land. Assistant Zoning Administrator Doug Casina agreed with that part of the evidence.
6. There is an undeveloped street to the east of the lot (Second Avenue) and an undeveloped alley to the south. Presently the alley and street areas are well vegetated.
7. The applicant attempted to have the adjoining unopened street and alley vacated by the town but he was unsuccessful in doing so.
8. There was significant testimony about the topography in the area. That is shown in Exhibit A-2, including a number of photos that are attached to Exhibit A-2.
9. Immediately to the west of the lot in question is a non-navigable drainage ditch that drains into a 2 ft., diameter culvert under Hwy. 13.
10. Most of the drainage ditch in question is off the property to the west.
11. There is also a non-navigable swale or drainage area that crosses the lot from east to west, south of where the applicant wishes to build.

12. If this lot were 10 ft., longer it would meet the minimum square foot requirement for a substandard lot of record.
13. The applicant contacted the Ashland, Bayfield, Douglas, Iron Land and Water Conservation Department and had a storm water management assessment report prepared by Mr. Lobermeier. That report is part of Exhibit A-5. At the conclusion of the report Mr. Lobermeier stated, "If these recommendations are implemented during construction, this project should not cause any negative impact to the neighboring parcels or the receiving area downstream and north of State Highway 13."
14. A Mr. Gerhardt Glass spoke on behalf of some neighbors, the Morellis, regarding drainage issues. Mr. Glass claimed that there was a 20 ft., deep ravine that was actually on the property. This testimony conflicts with all of the other testimony in the case. It also conflicts with the survey from Nelson Surveying and also Mr. Lobermeier's report.
15. During the course of the public hearing, Board of Adjustment member Compton pointed out that Mr. Lobermeier had indicated in his report in paragraph 4 on page 1 that there was a 7 ft., elevation drop at the north end of the lot, to the west into the drainage swale that emptied into the culvert. That same portion of the report indicated that there was a drop of approximately 4 ft., at the swale edge into the bottom of the swale at the southeast corner of the proposed building location.
16. That reference in the Lobermeier report seems to be supported by the pictures attached to Exhibit A-2.
17. Based upon the above, the board finds that the drainage problems are not nearly as severe as what was claimed by Mr. Glass.
18. The area where the drainage occurs is heavily vegetated with areas of very mature trees.
19. The applicant indicated that he was very receptive and agreeable to a number of conditions if the variance were to be granted.
20. The board finds that given the small size of this piece of land, and given that basically no development could occur without a variance, it would be an unnecessary hardship if a variance were not granted. In determining whether there is an unnecessary hardship the board has considered whether to deny the variance would unreasonably prevent the owner from using the property for a permitted purpose or to render conformity with the restriction unnecessarily burdensome.
21. In making that determination the board has considered the purpose of the zoning restriction in question, its effect on the property, the effect of the variance on the neighborhood, and the larger public interest.
22. The board has considered specifically Sec. 13-1-3 of the Ordinance and the purpose of the Ordinance in promoting and protecting the public health, safety, convenience and general welfare. Based upon the Lobermeier report and its conclusions, the board feels that granting a variance in this case would not have a bad effect on the property, it would not adversely affect the neighborhood and the larger public interest would be served.
23. The board has also considered the fact that the town board recommended disapproval of the ordinance. However, the board notes that Mr. Casina, who is also a town board member, had testified and indicated that while the comprehensive plan had been referred to by the town board it, in fact, had not been considered in making the recommendation. Also, the comprehensive plan does state that part of the plan is to promote single family residences.

Decision: For all of the above reasons the board decides that the variance should be granted with the following conditions:

1. The new residence must be hooked up to the municipal sewer.
2. The construction of the home is subject to the Stormwater Management Assessment Report prepared by Mr. Lobermeier and dated August 20, 2007. Each and every one of the recommendations in that report shall be followed.
3. More specifically, there shall also be no filling of any of the existing drainage features. If it is necessary in order to construct the home to even partially fill the swale that runs east and west in the middle of the lot, as shown on the Nelson survey, then the swale shall be relocated farther south.
4. There shall be no further accessory buildings of any kind on the parcel.
5. The house shall be limited to 24 ft. x 40 ft., including roof overhang and garage, and not including the deck.
6. The applicant may also construct a deck not to exceed 144 sq. ft., subject to approval as to location, size and construction techniques by Mr. Lobermeier or some other representative of the Ashland, Bayfield, Douglas, Iron Land and Water Conservation Department. The deck shall not be located on the south or west side of the building.
7. Any driveway shall be gravel and shall not exceed the minimum width as set forth in the applicable town ordinance.

Motion made by Phil Lupa, seconded by Randy Matis to grant the variance with the conditions as stated.

MOTION PASSED.

VOTE: Yes 4 No 0

Dated: August 31 2007 RECEIVED
SEP 04 2007
Randy Matis
Bayfield Co. Zoning Dept

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

Also Present: Michael Fauerbach, Attorney for BOA