

DECISION ON VARIANCE
BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

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 Bayfield Co. Zoning Dept.

Case #2
January 31, 2008

TRG Up North LLC, Todd Harbort, agent is requesting variances from the terms of Section 13-1-40(c)(3)d. and Section 13-1-32(e)(1) of the Bayfield County Planning and Zoning Ordinance.

Section 13-1-40(c)(3)d. requires: The structure may not be substantially reconstructed by replacement of exterior walls constituting more than twenty-five percent (25%) of the perimeter of the initial 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.

Applicant seeks to exceed this 25% threshold by completely rebuilding existing Units 1, 2, & 3, as well as the existing garage with 3 new units in approximately the same location and a new 5 bay garage.

(e) **Multiple Unit Developments.** Multiple Unit Developments providing shoreline access to navigable waters shall be subject to the following minimum requirements:

(1) Table of requirements:

	Class 1 Lakes, Lake Superior	Class 2 Lakes	Class 3 Lakes, Rivers, Streams
Shoreline Frontage	50 feet per unit; 600 feet minimum	100 feet per unit; 800 feet minimum	150 feet per unit; 1,200 feet minimum
Open Space (except as provided below)	30,000 square feet per unit	60,000 square feet per unit	120,000 square feet per unit
Open Space in UVOD	7,500 square feet per unit	15,000 square feet per unit	30,000 square feet per unit
Open Space in non-UVOD Public Sewer System (except Town of Bayfield)	10,000 square feet per unit	20,000 square feet per unit	40,000 square feet per unit
Open Space in non-UVOD Public Sewer System (Town of Bayfield)	30,000 square feet per unit	60,000 square feet per unit	120,000 square feet per unit
Open Space in R-3	2 acres per unit	2 acres per unit	3 acres per unit

Open Space in F-1, A-1, and R-2	4.5 acres per unit	4.5 acres per unit	4.5 acres per unit
Shoreline Setback	200 feet	200 feet	225 feet
Lot Line Setback	10 ft.	20 ft.	30 ft.
Viewing Corridors	20% of frontage	15% of frontage	10% of frontage
Viewing Corridors Width	Up to 20% of total with no individual greater than 30 feet	Up to 15% of total with no individual greater than 30 feet	Up to 10% of total with no individual greater than 30 feet

Section 13-1-32 (e)(1) states; Row B, Column 1 requires 30,000 sq. ft per dwelling unit, Row E, Column 1 requires a 200' setback.

Applicant seeks a variance to replace Unit 1 at 173', Unit 2 at 107', Unit 3 at 78' and Garage at 214'. This will produce the same amount of dwelling units that exist today, but will decrease the open space by approximately 700 sq. ft for the expanded footprint of the new structures over the existing footprint.

Property is described as a legally pre-existing resort with 200.15' of shoreline frontage. Parcel (ID # 034-1132-01, 02, & 03) consisting of 1.02-acres (44,480) sq. ft. further described as Lot 11 of Namakagon Lake Shore Subdivision, located in Section 12, Township 43 N, Range 6 W, Town of Namakagon, Bayfield County, WI.

1. This property is a legally pre-existing resort/condominium development with 200.15 feet of shoreline frontage and 1.02 acres (44,800 square feet) of total open space.
2. The applicant seeks a variance from Sec. 13-1-32(e)(1) of the ordinance relating to the 200 foot setback and the 30,000 square foot open space requirement.
3. The applicant seeks to replace Unit 1 at 173 feet, Unit 2 at 107 feet , and Unit 3 at 78 feet from the ordinary high water mark of Garden Lake – Lake Namakagon.
4. The applicant also seeks to reconstruct and enlarge a garage at 214 feet from the ordinary high water mark.
5. The plan proposed by the applicant will not increase the number of units. It appeared initially that it might decrease the amount of open space but if certain other conditions (which will be described below) are met the open space would actually be increased.
6. The board has considered all of the exhibits, including but not limited to Exhibit B-1, the application packet.
7. The applicant has already spent approximately \$25,000 on a new sanitary system, water and electric services.
8. The applicant wishes to raze all three of the buildings and garage and build larger substitute buildings.
9. There were approximately 4 letters and a petition signed by 13 people that objected to this variance because of the overdeveloped nature of this particular parcel.
10. The Bayfield County Lakes Forum stated their opposition to this request for a variance.

11. The Town of Namakagon recommended against approval of the variance sought by the applicant. Town Chairman Robert Rasmussen testified that this was a very over-developed area with 5 buildings on one acre of land.
12. Mr. Rasmussen also indicated that the town would agree to cooperate in the vacation of an unopened town right-of-way that would have the effect of adding open space to the applicant's parcel.
13. Casey Louther is a developer/designer working with the applicant. He indicated that two of the buildings (Units 2 and 3) were in very bad shape with carpenter ants, deterioration and electrical problems.
14. Also according to Mr. Louther, the applicants had come to an agreement with the Bayfield County Health Department to shut down those two buildings and not rent them anymore. The health department had given the applicants until April 2008 to do something about these buildings.
15. Mr. Louther also indicated that cabin #1, while not in as bad shape as #2 and #3, had a leaking foundation and other significant problems.
16. Mr. Louther indicated that the applicants were willing to go along with all parts of the mitigation plan in Exhibit B-1.
17. Mr. Louther submitted site plans as part of Exhibit B-1 that would have the new cabins no closer to the lake and no closer to any of the side yard setbacks.
18. Mr. Louther also presented a picture of the existing garage that also had a problems with wild animals in it and some carpenter ants.
19. Mr. Louther indicated that the applicants were attempting to increase the amount of open space in two ways. One would be to vacate a town road in the area. The other effort would be to purchase approximately .2 acres of land directly to the north of the parcel in question.
20. Mr. Louther indicated that the plan was to build new buildings with full foundations, 2 x 6 construction, log siding and timber trim around the windows.
21. There was significant testimony from a variety of people that suggested that these buildings are in bad shape and need work.
22. Mr. Louther also indicated that part of the plan would be to tear down 4 sheds and an outhouse which would have the effect of removing about 600 square feet of buildings and also open up additional open space.
23. Zoning and Planning Administrator Karl Kastrosky testified that the applicants would actually be free without a variance to add onto their existing buildings and increase their size. As far as Mr. Kastrosky was concerned this would create two problems. The first problem would be that the zoning department would have much less control over the development than if the variance was granted and conditions could be attached. The other problem is that you would be adding onto buildings that simply were not in very good shape.
24. Mr. Kastrosky was of the opinion that if the sheds and outhouse were torn down, the town road was vacated and the additional land was purchased there might be as much as 17,000 additional square feet of open space.
25. The board finds that to not grant the variance would be an unnecessary hardship. The board considers unnecessary hardship as something that would unreasonably prevent the owner

from using the property for a permitted purpose or would render conformity with such restriction unnecessarily burdensome.

26. Since the applicants could have the same density of development without a variance, the board finds that it would be an unnecessary hardship not to allow construction of new buildings with the use of a variance.
27. In determining this unnecessary hardship the board is relying upon the conditions that are imposed below as a means of meeting the intent and purpose of the ordinance as set forth in Sec. 13-1-2 and 13-1-3. Particularly, the board is concerned about maintaining safe and healthful conditions by getting rid of these old buildings and preventing and controlling water pollution and also regulating the placement of structures and preventing the overcrowding of a natural resource, Lake Namakagon. This would benefit both this parcel and the immediate neighborhood.
28. The board is particularly concerned that the zoning department have some control of this development or redevelopment of this old resort and old buildings to meet the concerns of public health and safety.

Decision: For all of the above reasons, the request for a variance is granted with the following conditions:

1. Mr. Lobermeier's mitigation plan will be followed in its entirety and be completed before any building construction starts. If there is some part of the mitigation plan which it would be very impractical to initiate before building starts, Mr. Lobermeier may waive or give allowance to have that particular part (and only that particular part) delayed until after building.
2. Neither the applicants nor any later owners of units 1, 2 and 3 may do any further development, create additional impervious surface of any kind on the parcel, nor may they obtain any further variances.
3. There will be no trailers, no campers and no tents on the subject premises.
4. The applicants will purchase the land that they are seeking to the north of the subject parcel.
5. The applicants will pursue the vacation of the town road and pay all expenses related to that vacation.
6. All three of the older cabins and the garage will be torn down and the materials from those buildings will be placed in a licensed construction landfill.
7. The 4 sheds and the outhouse will also be torn down and the refuse from those tear downs will be placed in a licensed construction landfill.
8. Each of the 3 new cabins will have a footprint that does not exceed the square footage of the footprint of the existing building which it replaces. The new buildings may not exceed 2 stories in height.
9. The applicant may construct a 5 stall garage but that garage may not have more than an additional 700 square feet of space beyond what the existing garage has.

Motion made by Rasmussen, seconded by Lupa to grant the variance with the conditions indicated.

MOTION PASSED.

VOTE: Yes 5 No 0

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Dated: February 7, 2008

Randy J. Matis

Members Present: Richard Compton, Randy Matis, Dennis Rasmussen, Phillip Lupa and Lee Wiesner

Also Present: Michael Fauerbach, Attorney for BOA