

PUBLIC MEETING

**DOOR COUNTY BOARD OF ADJUSTMENT
421 NEBRASKA STREET – DOOR COUNTY GOVERNMENT CENTER
STURGEON BAY, WI 54235**

The Door County Board of Adjustment will hold a meeting on **Tuesday, March 10, 2020**, at **6:30 p.m.** in the **Peninsula Room (C121), Door County Government Center**, at Sturgeon Bay, WI 54235.

AGENDA

- 1.0 Call to order and declaration of quorum.
- 2.0 Discuss and arrive at a decision on a Petition for Grant of Variance.
 - 2.1 The Raymond P. & Barbara J. Hansen Trust; woodland clearing limitations; Washington.
- 3.0 Old Business.
 - 3.1 Read and act on minutes of February 25, 2020, meeting.
 - 3.2 Final disposition of the following case considered by the Board of Adjustment at the February 25, 2020, meeting: Town of Baileys Harbor.
- 4.0 Other Matters.
 - 4.1 Announce next meeting.
- 5.0 Vouchers.
- 6.0 Adjournment.

** Deviation from the order shown may occur. **

Fred Frey, Chair
Board of Adjustment

1/31/20

*Materials regarding these agenda items may be viewed at the Door County Land Use Services Department, 421 Nebraska Street, Sturgeon Bay, Wisconsin during normal business hours, 8:00 a.m. to 4:30 p.m., Monday-Friday. Application materials may also be viewed on-line beginning approximately four business days before the hearing at: <http://map.co.door.wi.us/Agendas-Minutes/Zoning%20Board%20of%20Adjustment/>

In compliance with the Americans with Disabilities Act: Any person needing assistance to participate in this meeting should contact the Office of the County Clerk at (920) 746-2200. Notification 48 hours prior to a meeting will enable the County to make reasonable arrangements to ensure accessibility to that meeting.

PUBLIC HEARING BEFORE
THE DOOR COUNTY BOARD OF ADJUSTMENT

Door County, Wisconsin

A public hearing will be held by the Door County Board of Adjustment on **Tuesday, March 10, 2020, at 6:30 p.m.** in the "**Peninsula Room**" (C121) – **First Floor** of the **Door County Government Center**, 421 Nebraska Street, Sturgeon Bay, Wisconsin. The purpose of this hearing is to give consideration to the following County zoning ordinance variance petition as specified in the County zoning ordinance.

Starting at 6:30 p.m.

Town of Washington

The Raymond P. & Barbara J. Hansen Trust petitions for a variance from section 5.07(4)(a) of the Door County Comprehensive Zoning Ordinance which allows up to 20% of the woodland be removed from properties located in the General Agricultural (GA) zoning district. The petitioner proposes to remove up to 78.4% of the woodland on the property. (Note: Randy Dvorak intends on operating a nonmetallic mine on the property after receiving all appropriate approvals.) This property is known as Tax Parcel No. 028-04-32343012B and is located south of 893 Jackson Harbor Road in Section 32, Town 34 North, Range 30 East, and in a General Agricultural (GA) zoning district.

Interested parties may give oral testimony. Written testimony will be accepted on 8 1/2" x 11" paper only at the Door County Land Use Services Department, 421 Nebraska Street, Sturgeon Bay, WI 54235 (Fax 920-746-2387) until **3:30 p.m.** the day before the hearing. Anonymous correspondence will not be accepted. **Please note that any correspondence or testimony you may have submitted for any town-level proceedings regarding this matter does NOT get forwarded to the county.**

All application/petition materials may be viewed at the Door County Land Use Services Department, 421 Nebraska Street, Sturgeon Bay, Wisconsin during normal business hours, 8:00 a.m. to 4:30 p.m., Monday-Friday. Application/petition materials may also be viewed on-line beginning approximately four business days before the hearing at:

<http://map.co.door.wi.us/Agendas-Minutes/Zoning%20Board%20of%20Adjustment/>

Fred Frey, Chairman
Door County Board of Adjustment

RDB
02/13/20

DOOR COUNTY LAND USE SERVICES
421 Nebraska Street
Door County Government Center
Sturgeon Bay, Wisconsin 54235
(920-746-2323)

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JAN - 3 2020

DOOR COUNTY
LAND USE SERVICES DEPARTMENT

PETITION FOR GRANT OF VARIANCE

A variance is a relaxation of a standard in a land use ordinance. Variances are decided by the zoning board of adjustment. The zoning board is a quasi-judicial body because it functions almost like a court. The board's job is not to compromise ordinance provisions for a property owner's convenience but to apply legal criteria provided in state laws, court decisions and the local ordinance to a specific fact situation. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden.

PETITION: (I) (We)
Full Name RANDY DVORAK Telephone No. 920-535-0200
Mailing Address 6332 W. WHITEFISH BAY RD.
City STURGEON BAY State WISCONSIN Zip 54235
hereby petition(s) the Door County Board of Adjustment for a variance from Section (s) S.D7(4) a

of the Door County Zoning Ordinance which requires MAXIMUM 20% OF WOODLANDS ON PARCEL MAY BE CLEARED FOR G.A. ZONING DISTRICT.

(I) (We) propose to USE THIS PARCEL FOR NON-METALLIC MINING, THEREFORE REQUIRING CLEARING OF UP TO 78.4% OF WOODLANDS ON THIS PARCEL.

LOCATION:
The description of the property involved in this petition is located at:
Fire # --- Road SALMON HARBOUR RD. Township WASHINGTON
Govt Lot --- or 1/4 Section 32 Town 34 North, Range 30 East
Tax Parcel No. D28 - D4 - 32343012B
Zoning District GENERAL AGRICULTURE (G.A.) Lot Size 15.00 AC.
Existing use of structure or land in question VACANT PARCEL WITH NO IMPROVEMENTS.

ATTACHMENTS:

- 1) A site plan, drawn to-scale, indicating lot size, size of buildings and decks, distances between buildings and the centerlines of all abutting roads, ordinary high water mark, lot lines (identify lot markers), the sanitary waste disposal system and well. If a survey is available, please submit the survey. **IF PLANS EXCEED AN 11" X 17" FORMAT, SUBMIT ONE COPY OF EACH SHEET REDUCED TO NO LARGER THAN 11" X 17".**
- 2) Building plans, drawn to scale, of the proposed project, including floor plans and elevation views. The application will not be processed without scaled drawings. (Plans submitted with this petition will be the only plans reviewed by the Board of Adjustment. A change in plans will warrant a new petition, fee, and public hearing.) **IF PLANS EXCEED AN 11" X 17" FORMAT, SUBMIT ONE COPY OF EACH SHEET REDUCED TO NO LARGER THAN 11" X 17".**
- 3) Please provide **complete** responses regarding a), b), and c) below. Attach additional pages if necessary. To qualify for a variance, the applicant must demonstrate that their request/situation meets the following three requirements:

- (a) Unique property limitations
Unique physical limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with ordinance requirements. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not factors in deciding variances. Nearby ordinance violations, prior variances or lack of objections from neighbors do not provide a basis for granting a variance.

Unique features of this property prevent compliance with the terms of the ordinance, including:

THE ONLY LIMITATION IS THAT UPLANDS HARDWOODS EXIST ON THIS PARCEL WHICH IS AN IDEAL PARCEL FOR A QUARRY. IN ORDER TO USE THIS PARCEL AS A QUARRY, CLEARING OF THESE WOODLANDS IS NECESSARY.

FOR OFFICE USE ONLY
Receipt No. 15 Fee 500.00 Date 1-7-2020
Hearing Advertised Dates: _____
Hearing Date _____ Decision _____

TOWN OF: _____
OWNER: _____
SECTION T N/R E

PARCEL NO.: 0

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DOOR COUNTY LAND USE SERVICES DEPARTMENT

PETITION FOR GRANT OF VARIANCE - PAGE 2

(b) No Harm to Public Interests

A variance may not be granted which results in harm to public interests. In applying this test, the Board of Adjustment must consider the impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the entire community and the general public. These interests are listed as objectives in the purpose statement of an ordinance and may include:

- Public health, safety and welfare
- Water quality
- Fish and wildlife habitat
- Natural scenic beauty
- Minimization of property damages
- Provision of efficient public facilities and utilities
- Achievement of eventual compliance for nonconforming uses, structures and lots
- Any other public interest issues

A variance will not be contrary to the public interest because:

SEE ATTACHED.

(c) Unnecessary hardship

An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.

For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The board of adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests.

Unnecessary hardship is present because:

THE FACT THAT THIS PARCEL IS ZONED C.A. REQUIRES CLEARING FOR ANY TYPE OF AGRICULTURAL USE. LASTLY, IF CLEARING OF THESE WOODLANDS AS REQUESTED IS UNACHIEVABLE, THIS PARCEL CANNOT BE USED AS A QUARRY, THEREFORE PREVENTING A MUCH-NEEDED LOCAL RESOURCE TO ALL ON WASHINGTON ISLAND.

4) A non-refundable \$500.00 fee payment to defray the cost of publishing the legal notice and mailing to all interested parties.

AUTHORIZATION FOR INSPECTION:

I hereby authorize the Zoning Administrator to enter upon the premises for which this petition is made at any reasonable time for all purposes of inspection related to this petition.

CERTIFICATION:

I hereby certify that all the above statements and attachments submitted hereto are true and correct to the best of my knowledge and belief.

SIGNATURE OF PETITIONER/AGENT:

DATE:

Randy Dowl

1-7-20

SCHEDULING:

This petition will be scheduled for the next available Door County Board of Adjustment meeting. Approximately two weeks prior to that meeting, a legal notice will be mailed to you providing further information regarding the time and location of the meeting. It is recommended that the petitioner attend the Board of Adjustment meeting to present the case and to answer any questions the Board of Adjustment may ask. If you are unable to attend the meeting, you may want to have your attorney or contractor present on your behalf.

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PETITION FOR GRANT OF VARIANCE -- PAGE 2

JAN -3 2020

(b) No Harm to Public Interests

A variance may not be granted which results in harm to public interests. **DOOR COUNTY PLANNING AND ZONING SERVICES DEPARTMENT** this test, the Board of Adjustment must consider the impact of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the entire community and the general public. These interests are listed as objectives in the purpose statement of an ordinance and may include:

- Public health, safety and welfare
- Water quality
- Fish and wildlife habitat
- Natural scenic beauty
- Minimization of property damages
- Provision of efficient public facilities and utilities
- Achievement of eventual compliance for nonconforming uses, structures and lots
- Any other public interest issues

A variance will not be contrary to the public interest because:

SEE ATTACHED

(c) Unnecessary Hardship

An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.

For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The board of adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests.

Unnecessary hardship is present because:

THE FACT THAT THIS PARCEL IS ZONED C.A. REQUIRES CLEARING FOR ANY TYPE OF AGRICULTURAL USE (EVEN IF CLEARING OF THESE WOODLANDS AS REQUIRED IS UNAVOIDABLE, THIS PARCEL CANNOT BE USED AS A PASTURE, THEREFORE PREVENTING A PASTURE-NEEDED LOCAL RESERVE TO ALL ANIMAL INSTITUTIONS (SUCH AS

- 4) A non-refundable \$500.00 fee payment to defray the cost of publishing the legal notice and mailing to all interested parties.

AUTHORIZATION FOR INSPECTION:

I hereby authorize the Zoning Administrator to enter upon the premises for which this petition is made at any reasonable time for all purposes of inspection related to this petition.

CERTIFICATION:

I hereby certify that all the above statements and attachments submitted hereto are true and correct to the best of my knowledge and belief.

STATEMENT OF PETITIONER/AGENT:

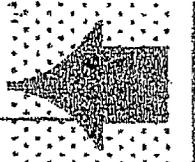
DATE:

Doug A. Hansen

1-8-2020

SCHEDULING:

This petition will be scheduled for the next available Door County Board of Adjustment meeting. Approximately two weeks prior to that meeting, a legal notice will be mailed to you providing further information regarding the time and location of the meeting. It is recommended that the petitioner attend the Board of Adjustment meeting to present the case and to answer any questions the Board of Adjustment may ask. If you are unable to attend the



JAN - 3 2020

DOOR COUNTY
LAND USE SERVICES DEPARTMENT**Attachments:****3b. No Harm to Public Interests**

A variance will not be contrary to the public interest because:

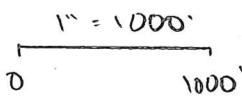
- **This proposed quarry will be located adjacent to existing quarries, is off road, hidden and surrounded by woodlands, and the nearest residence is approximately 400-feet away separated by woodlands.**
- **Mining and crushing operations were previously performed on this parcel and the parcel to the north in the late 1980's and early 1990's.**
- **A 50-foot buffer surrounding the parcel will be maintained as existing woodlands.**
- **There is a definite lack of rock, dimensional stone, and aggregates on the island. There is currently limited clear stone available on the island, therefore majority of the stone needed is hauled in by truck on the ferry.**
- **With expected rise of water levels, the need for dimensional stone for shoreland is highly anticipated.**
- **By providing a source of rock and aggregate on the island, fewer haul trucks will be needed on the ferry from the mainland.**



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... from the Web Map of ...
(//www.co.door.wi.gov)
Door County, Wisconsin
... for all seasons!



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DOOR COUNTY
LAND USE SERVICES DEPARTMENT



Map

Printed 12/20/2019 courtesy of Door County Land Information Office

... from the Web Map of ...
(//www.co.door.wi.gov)

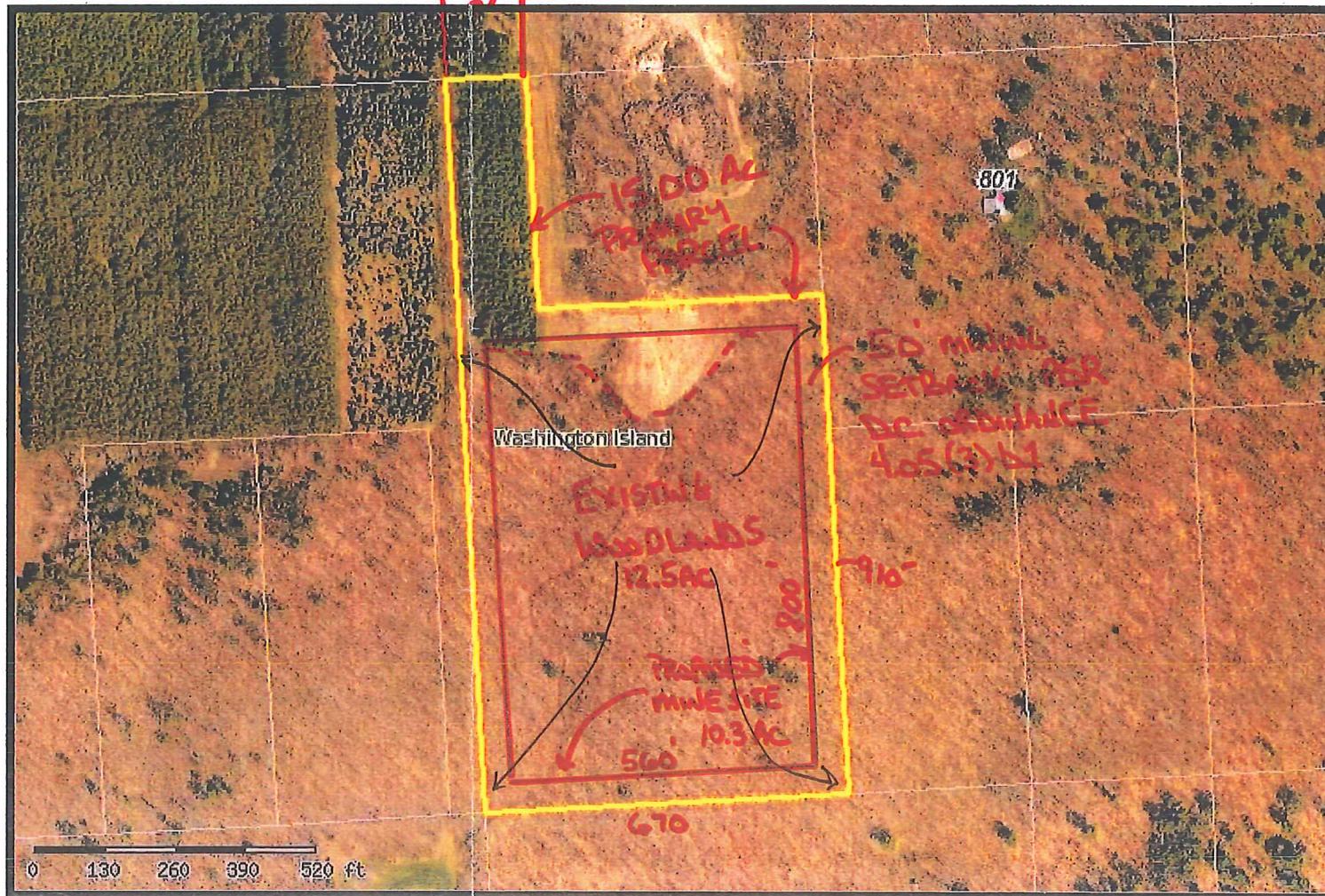
4.27 AC
SECONDARY PARCEL

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JAN - 8 2020
DOOR COUNTY
LAND USE SERVICES DEPARTMENT

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20% MAX OF WOODLANDS
MAY BE CLEARED PER
DC ORDINANCE 5.07(4)a

- PROPOSED MINE ACTIVITY
= 800' x 560' = 10.3 AC
- PORTION CONSISTING OF
WOODLANDS = 9.8 AC
- TOTAL WOODLANDS ON-SITE
= 12.5 AC
- PERMITTED CLEARING = 20%
= 20% x 12.5 AC = 2.5 AC
- REQUESTED WOODLANDS
CLEARING = 9.8 AC
= 9.8 / 12.5 = 78.4%
- PURSUE VARIANCE TO
CLEAR 78.4% OF WOODLANDS
FOR NON-METALLIC MINE



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GA Zon116



Door County Planning Department Request for Town Recommendation

Randy Dvorak petitions for a variance from section 5.07(4)(a) of the Door County Comprehensive Zoning Ordinance which allows up to 20% of the woodland be removed from properties located in the General Agricultural (GA) zoning district. The petitioner proposes to remove up to 78.4% of the woodland on this property. (Note: The property owner intends on operating a nonmetallic mine on the property after receiving all appropriate approvals.) This property is accessed from Jackson Harbor Road and is located in Section 32, Town 34 North, Range 30 East, in the Town of Washington.

The Zoning and Planning Committee of the Town of Washington held a legally noticed and posted meeting on 2/3/20, at which, by a vote of 4 (Yea) to 0 (Nay), the town recommended (check one) **SUPPORT** **DENIAL** for a variance.

Reason(s) for the town's decision:

The proposed clearing of woodland is consistent with the definition of the General Agricultural (GA) Zoning District found in Chapter 2.03(9)(5) of the Door Co. Zoning Ordinance where certain nonagricultural uses which require spacious areas to operate are needed and natural resource exploitation can occur. It is also understood that the proposed use of an open pit mine will require additional permitting, engineering and scrutiny that may result in added conditions to be met. An overriding public benefit will be provided by allowing construction material to be supplied without transport from the mainland which may consist of material for shoreland erosion control. The proposed use is located well away from the view of any public right away and buffered with trees from the neighbors which will minimize the impact on scenic beauty.

Is the proposal consistent with the Town Comprehensive Plan?

The proposed use is similar to previous uses on land located immediately to the north that is also zoned GA.

Concerns or objections the town may wish to see potentially addressed through conditions:

Concerns about hours of operation and environmental impact were expressed by the neighbors which may be resolved during the soil and water permitting process and the conditional use permit application and hearings.


Town Clerk Signature

2-20-2020
Date

*See reverse for variance criteria.

FEB 20 2020

**MINUTES OF MEETING
DOOR COUNTY BOARD OF ADJUSTMENT**

February 25, 2020

1.0 Call to order and declaration of quorum.

The meeting was called to order by Chairperson Frey at 6:30 p.m. on Tuesday, February 25, 2020, in the Peninsula Room (C121) of the Door County Government Center, Sturgeon Bay, Wisconsin.

Board of Adjustment Members

Present:

Fred Frey, Chairperson
Aric Weber, Vice-Chairperson
Monica Nelson
John Young
Chris Anderson

Staff

Richard D. Brauer, Zoning Administrator

Excused:

Arps Horvath
Bob Ryan

2.0 Discuss and arrive at a decision on a Petition for Grant of Variance.

2.1 Town of Baileys Harbor; encroach into setback from road right-of-way; 2404 Park Road; Town of Baileys Harbor.

Motion by Weber, seconded by Young, to grant the petition for grant of variance. Motion carried unanimously (5-0).

Aye: Frey, Weber, Young, Nelson, Anderson.

The basis for the decision is set forth on the attached Board of Adjustment decision making worksheets.

3.0 Old Business.

3.1 Read and act on Minutes of February 11, 2020, special meeting.

Motion by Young, seconded by Anderson, to approve the minutes as presented. Motion carried unanimously (5-0).

3.2 Read and act on Minutes of February 11, 2020, regular meeting.

Motion by Nelson, seconded by Weber, to approve the minutes as presented. Motion carried unanimously (5-0).

3.3 Final disposition of the following appeal considered by the Board of Adjustment at the January 28, 2020, meeting and again at their meeting held on February 11, 2020: Stephan B. Nordstrom, Graycliffe, LLC, Carl M. Curry, and Cynthia M. Curry.

Motion by Young, seconded by Weber, to approve the final disposition of the case. Motion carried unanimously (5-0).

3.4 Final disposition of the following case considered by the Board of Adjustment at the February 11, 2020, meeting: Richard H. Barker and Julie E. Davis.

Motion by Weber, seconded by Young, to approve the final disposition of the case. Motion carried unanimously (5-0).

4.0 Other Matters.

4.1 Announce next meeting.

Staff announced that the next regularly scheduled meeting will be held on March 10, 2020. One variance case has been scheduled for public hearing that evening. Board members Horvath and Anderson will be unable to attend that hearing. Board member Weber was unsure whether he would be available that evening.

5.0 Vouchers.

All of the board members present submitted vouchers.

6.0 Adjournment.

Motion by Nelson, seconded by Weber, to adjourn. Motion carried unanimously (5-0). Chairperson Frey declared the meeting adjourned at 7:28 p.m.

Respectfully submitted,

Richard D. Brauer
Zoning Administrator

RDB
2/26/20

DOOR COUNTY BOARD OF ADJUSTMENT
Decision – Area Variance

Hearing Date: February 25, 2020 Decision Date: February 25, 2020

Applicants: Town of Baileys Harbor

Property: PIN 002-03-20302811J / 2404 Park Road

Description of variance requested:

The Town of Baileys Harbor petitions for a variance from section 3.05(5) of the Door County Comprehensive Zoning Ordinance which requires structures in areas designated as "Core" to be setback at least 25 feet from the edge of the road right-of-way. The petitioners propose to construct a new Town of Baileys Harbor Emergency Response Facility as close as 9 feet from the edge of the right-of-way of Park Road. This property is located at 2404 Park Road in Section 20, Town 30 North, Range 28 East, and in the Mixed Use Commercial (MC) zoning district.

DECISION:

On the basis of the Decision Making Worksheet (attached hereto and incorporated herein by reference as if set forth in full) and the record in this matter the Board of Adjustment finds and determines that:

- A. The requested variance does meet the criteria set forth in Section 59.694(7) Wisconsin Statutes.

The Board of Adjustment voted to grant the petition for grant of variance by the following vote:

Fred Frey: Aye
Aric Weber: Aye
John Young: Aye
Monica Nelson: Aye
Chris Anderson: Aye

Signed _____

Signed _____

Chairperson

Recording Clerk

Dated: March 10, 2020
Filed: March 11, 2020

Appeals. This decision may be appealed by a person aggrieved by this decision by filing an action in certiorari in the circuit court for this county within 30 days after the date of filing of this decision. The County of Door assumes no liability for and makes no warranty as to reliance on this decision if construction is commenced prior to expiration of this 30 day period.

The privileges granted by this decision shall become void after one year unless the zoning permits for the authorized project have been obtained within such time.

**DOOR COUNTY BOARD OF ADJUSTMENT
DECISION-MAKING WORKSHEET**

APPLICANTS NAMES: Town of Baileys Harbor

PROPERTY ADDRESSES / P.I.N.s: 2402 Park Road / 002-03-20302811J

HEARING DATE: February 25, 2020

To grant an area variance, all three of the standards enumerated below must be met. In addressing each standard, express the reasons for the decision, i.e., why the facts did or did not satisfy the standards, the weight and credibility of the evidence presented (or lack thereof), and any other relevant considerations.

1. UNIQUE PHYSICAL PROPERTY LIMITATIONS.

Are there unique physical property limitations such as steep slopes, wetlands, or parcel shape that prevent compliance with the ordinance? The circumstances of an applicant (growing family, need for a larger garage, etc.) are not factors in deciding variances. Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amending the ordinance. The variance is not warranted if the physical character of the property allows a landowner to develop or build in compliance with the zoning ordinance.

In order for a variance to satisfy the unique physical property limitation test, the question below must be answered affirmatively.

Does this property contain unique physical property limitations (e.g., wetland presence, parcel shape, steep slope, etc.) that would prevent compliance with the ordinance?

YES X NO

EXPLAIN: Irregularly shaped parcel does not allow for the construction of a building that complies with all setback requirements and meets the needs of the town. The locations of existing wells and parking areas limit the options available.

2. UNNECESSARY HARDSHIP.

Unnecessary hardship exists when a literal enforcement of the ordinance would unreasonably prevent the owner from using the property for a permitted purpose or when conformity with ordinance standards would be unnecessarily burdensome.

Considerations:

- Unnecessary hardship should be determined in light of the purpose and intent of the zoning ordinance in question, as well as any statute or administrative rule upon which the ordinance is based. (See page 4.) The facts of the case should be analyzed in light of these purposes. Only after considering the purpose(s) of the statute and/or ordinance, and the nature of the specific restriction(s) at issue, may a decision be made as to whether or not failure to grant a variance will cause an unnecessary hardship.
- Unnecessary hardship may arise due to a unique property limitation of a parcel (see #1, above). A variance is not warranted if the physical character of the property allows a landowner to develop or build in compliance with the zoning ordinance.

- Unnecessary hardship does not include considerations personal to the property owner (e.g., personal preference, desire to maximizing the economic value of the property, or financial hardship caused by ordinance compliance).
- Any self-created hardship, and/or any hardship that existed irrespective of the zoning ordinance in question are not proper grounds upon which to grant a variance.
- Alternatives to a variance (e.g., conditional use permit or restrictive covenant) may, as neither runs with the land, be preferable to accommodate a disability of the owner or owner's dependent.

In order for a variance to satisfy the unnecessary hardship test, one of the questions below (A or B) must be answered affirmatively.

- A. Does denial of the variance -- i.e., requiring compliance with the strict letter of the ordinance provision(s) in question (e.g., setbacks, height limitations, etc.) -- unreasonably prevent the owner from using the property for a permitted purpose?**
 YES NO

EXPLAIN: The denial of the variance would prevent the town from constructing a building that meets their needs. If the building were constructed in compliance with all setback requirements, it would not be possible to provide driveways that allow for adequate and safe movement of emergency vehicles on the property.

OR

- B. Is conformity with the regulation(s) unnecessarily burdensome?**
 YES NO

EXPLAIN: The denial of a variance would be unnecessarily burdensome in that it would prevent the town from constructing a building that meets all of their needs. The denial of the variance would also result in the relocation of existing wells and the loss of valuable parking spaces.

3. PUBLIC INTEREST/SPIRIT AND INTENT OF THE ORDINANCE.

A variance may not be granted which results in harm to public interests, nor thwarts the spirit and intent of the ordinance. In applying this test, the board should review the purpose statements of the ordinance (and any statute or administrative rule upon which the ordinance is based) in order to identify public interests. (See page 4.) The short-term and long-term impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the community, and even the state, should be considered. Review should focus on the general public interest, rather than just the narrow interests or impacts on neighbors, patrons, or residents in the vicinity of the project.

Cumulative effects are a proper consideration. For instance, in the context of shoreland zoning, the general availability of variances permitting the horizontal expansion of structures so close to the water's edge may have the cumulative effect of enclosing our lakes within a wall of impermeable surfaces to the exclusion of vegetation and impairing the ecological functions of the shoreland buffer.

A variance is not a popularity contest. The mere fact of public support or opposition is not, in and of itself, determinative of whether or not a variance is contrary to the public interest.

The board may grant only the minimum variance needed, i.e., the minimum variance necessary to relieve the unnecessary hardship. For instance, if the request is for a variance of 30 feet from the minimum setback, and a finding is made that a 10-foot setback reduction would allow the petitioner to use the property for a permitted purpose, then only a 10-foot setback reduction may be authorized.

Distinguish between hardships that are unnecessary in light of the unique conditions of the property and the purpose of the zoning ordinance from hardships that are inconsequential or not unique or because a variance would unduly undermine the purpose of the ordinance or the public interest.

In order for a variance to satisfy the public interest test, the question below must be answered negatively.

Does the granting of the variance result in harm to the public interest?

YES _____ NO X

EXPLAIN: The public interest will be better served by allowing the construction of a building that meets the needs of the community. The project promotes planned and orderly land use development. The project will protect property values and the property tax base. The size of the building is reasonable when taking into consideration the needs of the town. The upgrade of this emergency services building is needed in order to provide adequate protection for the community. The proposal promotes safety and efficiency in the county's road transportation system. There will be no negative effect on the wetlands located north of this property.

Has the applicant seeking a variance demonstrated that each of the three standards has been satisfied in this case? YES X NO _____. If yes, then substantial justice will be done by granting the variance.

The privileges granted by this decision shall become void after one year unless the property owners obtain the appropriate zoning permits within such time.

Dated this February 26, 2020

"1.04 Purpose. The purpose of this Ordinance is to promote and protect public health, safety, aesthetics, and other aspects of the general welfare. Further purposes of this Ordinance are to:

- (1) Aid in implementing the county development plan.
- (2) Promote planned and orderly land use development.
- (3) Protect property values and the property tax base.
- (4) Fix reasonable dimensional requirements to which buildings, structures, and lots shall conform.
- (5) Prevent overcrowding of the land.
- (6) Advance uses of land in accordance with its character and suitability.
- (7) Provide property with access to adequate sunlight and clean air.
- (8) Aid in protection of groundwater and surface water.
- (9) Preserve wetlands.
- (10) Protect the beauty of landscapes.
- (11) Conserve flora and fauna habitats.
- (12) Preserve and enhance the county's rural characteristics.
- (13) Protect vegetative shore cover.
- (14) Promote safety and efficiency in the county's road transportation system.
- (15) Define the duties and powers of administrative bodies in administering this Ordinance.
- (16) Prescribe penalties for violation of this Ordinance."

Wisconsin Statutes Purpose Statement

281.31. Navigable waters protection law

"(1) To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans and authorize municipal shoreland zoning regulations for the efficient use, conservation, development and protection of this state's water resources. The regulations shall relate to lands under, abutting or lying close to navigable waters. The purposes of the regulations shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty." (*Emphasis added.*)

Examples as to how to use the above in conjunction with analysis of a variance request

When considering a variance request to relax the required ordinary high water mark setback, county zoning ordinance purposes (8), (10), (11), and (13) are likely relevant to consider. Purposes (2), (3), (4), and (5) may also be relevant. Depending upon the nature of the variance request, any of the components of the statutory purposes behind shoreland zoning (above) may be relevant to consider.

When considering a variance request to relax a required yard (setback), county zoning ordinance purposes (2), (3), (4), and (5) are likely relevant to consider.