

Notice of Public Meeting
Tuesday, March 14, 2023
4:30 p.m.

**DOOR COUNTY
BOARD OF ADJUSTMENT**

*Door County Government Center
Peninsula Room
(C121, 1st floor)
421 Nebraska Street, Sturgeon Bay, WI*

USE THE 4TH STREET ENTRANCE, ACROSS FROM THE LIBRARY.

AGENDA

- 1.0 Call to order and declaration of quorum.
- 2.0 Read and act on minutes of February 28, 2023 meeting.
- 3.0 Final disposition of the following case considered by the Board of Adjustment at February 28, 2023 meeting.
 - 3.1 Mitchell E. Larson Trust; water and town road setbacks; Gibraltar.
- 4.0 Future meeting schedule:
 - March 28, 2023: No Meeting.
 - April 11, 2023: 1 case may be ready?
 - April 25, 2023: Training
- 5.0 Vouchers.
- 6.0 Adjournment.

Deviation from order shown may occur.

Fred Frey, Chair
Door County Board of Adjustment
c/o Door County Land Use Services Dept.
Door County Government Center
421 Nebraska St.
Sturgeon Bay, WI 54235

SKV
3/6/23

Applicants and others who wish to speak must attend in person.

Members of the public who wish to simply monitor/observe the hearings and meeting may attend in person or do so remotely by using the link below, or via the Zoom smartphone app, or by calling (312) 626-6799.

Link:
<https://us02web.zoom.us/j/82244542042?pwd=Wkxsd1ZYMxhmaFFsek1VNTcrcXI2Zz09>

Zoom Webinar ID: 822 4454 2042
Passcode: 501955

Notice in compliance with the Americans with Disabilities Act: 1) Any person needing assistance to participate in this meeting should contact the Office of the County Clerk at (920) 746-2200. Notification 72 hours prior to a meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting. 2) Door County is committed to making its electronic and information technology (e.g., website and contents) accessible for all persons. If you encounter difficulty accessing the posted materials for this meeting, located on-line at <https://www.co.door.wi.gov/AgendaCenter> under the committee name, or have trouble accessing the virtual meeting, please call (920) 746-2323, or send a FAX to (920) 746-2387, or send an e-mail to Lriemer@co.door.wi.us so that we may determine how to best assist you.

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

February 28, 2023

1.0 Call to order and declaration of quorum.

The meeting was called to order by Vice-Chair Weber at 4:30 p.m. on Tuesday, February 28, 2023, in the Peninsula Room (C-121) of the Door County Government Center, Sturgeon Bay, Wisconsin.

Present:	<u>BOA Members</u>	<u>Staff</u>	<u>Others</u>
	Aric Weber	Sue Vanden Langenberg	Mitchell Larson
	Bob Ryan	Kristin Rankin	Marc Isakson
	Monica Nelson		
	Cheryl Mick		
	Chris Anderson		

Excused: Fred Frey
Arps Horvath

**2.0 Discuss and arrive at a decision on Petition for Grant of Variance.
Mitchell E. Larson Trust; water and town road setbacks; Gibraltar.**

During testimony it was determined that the public hearing notice misstated the proposed work, in that the plans showed the entire residence was to be reconstructed along with the two additions, rather than just two additions to the existing residence. Thus, the petition is to build a new residence as close as 19' from the edge of the road right-of-way instead of 23.3' from the edge of the road right-of-way, in addition to the cited water setback variance.

Motion by Ryan, seconded by Mick, to deny the variance petition as requested. Motion failed (2–3; Nelson, Anderson, Weber “nay”).

Motion by Anderson, seconded by Nelson, to approve the variance with the condition that the 1st floor hallway / entryway into the utility room is not approved. Motion carried (3–2; Ryan, Mick “nay”).

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

3.0 Read and act on minutes of January 24, 2023 meeting.

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

4.0 Final disposition of the following cases considered by the Board of Adjustment at January 24, 2023 meeting.

4.1 Jeffrey and Mary Ann Miller; water setback; Nasewauppee.

4.2 Jack L. & Deanna Youngchild, Daniel & Dawn Redwine, and William D. & Doreen A. Swiekatowski; ordinary high water mark setback; Gardner.

Motion by Ryan, seconded by Anderson, to approve the final disposition of both cases. Motion carried unanimously (5–0).

5.0 Future meeting schedule:

- **March 14, 2023: No cases**
- **March 28, 2023: No Meeting.**
- **April 11, 2023: 1 case may be ready?**
- **April 25, 2023: Training**

There will be 1 variance ready for April 11, 2023: Weber, Ryan, Nelson, Anderson and Mick (via Zoom) are available. VandenLangenberg will check Frey and Horvath availability via email.

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Tonight's decision documents will be signed March 14th: Weber, Nelson and Anderson will attend.

Meeting schedule as discussed noted.

6.0 Vouchers.

All BOA members present submitted vouchers reflecting a 1.5-hour meeting,

7.0 Adjournment.

Motion by Ryan, seconded by Anderson, to adjourn. Motion carried unanimously (5–0). Vice-Chair Weber declared the meeting adjourned at 5:51 p.m.

Respectfully submitted by Sue Vanden Langenberg and Kristin Rankin, Zoning Administrators

**DOOR COUNTY BOARD OF ADJUSTMENT
Decision – Area Variance**

APPLICANT(S) NAME(S): Mitchell E. Larson Trust
PROPERTY ADDRESSES / PIN: 9137 Cottage Row / 014-40-0011
HEARING DATE: February 28, 2023
DECISION DATE: February 28, 2023

DESCRIPTION OF VARIANCE REQUESTED:

Mitchell E. Larson Trust petitions for a variance from Section IV.B.2.c.2) of the Shoreland Zoning Ordinance which requires any addition beyond the footprint of the existing residence be located at least 58.5’ from the ordinary high water mark of Green Bay, and Section 3.05(3) of the Comprehensive Zoning Ordinance which requires all structures to be located at least 32’ from the edge of a town road right of way. The applicant proposes to rebuild the existing residence, construct a 1,346 square foot second floor addition, and construct a 490 square foot first floor addition. The reconstructed residence will be located as close as 19’ from the edge of the town road right of way, and the first floor addition will be located as close as 48’ from the ordinary high water mark. The property is at 9137 Cottage Row.

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 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, based on the condition that the 1st floor hallway / entryway into the utility room is not approved, by the following vote:

Aric Weber:	Aye
Nelson	Aye
Chris Anderson	Aye
Bob Ryan:	Nay
Cheryl Mick:	Nay

Signed _____
Chairperson

Signed _____
Recording Clerk

Dated: March 14, 2023
Filed: March 15, 2023

Appeal: *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**

APPLICANT(S) NAME(S): Mitchell E. Larson Trust
PROPERTY ADDRESSES / PIN: 9137 Cottage Row / 014-40-0011
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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 NO

EXPLAIN: The property has steep slopes which creates driveway concerns.

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 _____

OR

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

EXPLAIN: Denial of a variance would be burdensome because it would require the house to be smaller than proposed and require the new residence to be built on the same footprint. The request is asking for minimal relief. Requiring the owner to build within the buildable footprint would be burdensome due to the steep slopes and would require the owner to remove more trees which would make the structure more visible from the road.

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: There will be less land disturbed by rebuilding in the same location as the existing residence which benefits the public interest. Fewer trees will be cut by rebuilding in the current location, and the residence will be further from the road. The proposal will only increase the impervious surface ratio by 0.88%. The town supports the request.

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.

Dated this: March 6, 2023

Door County Zoning Ordinance Purpose Statements

"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.