AGENDA

1.0 Call to order and declaration of quorum.

2.0 Old Business.
   2.1 Read and act on minutes of May 11, 2021 meeting.
   2.2 Final disposition of the following cases considered by the Board of Adjustment at the May 11, 2021 meeting: Eric A. & Lisa A. Olesen Joint Family Trust Dated May 6, 1997; James D. & Angela Ferguson.

3.0 Other Matters.
   3.1 Discuss future meeting dates.
   3.2 Discuss Board of Adjustment policies and procedures with Door County Corporation Counsel Grant Thomas and Land Use Services Department Director Mariah Goode, including but not limited to the following topics:
      • General information and resources available to BOA members.
      • Appeals court decision in Navis et al v. Door County BOA and Lauritzen.
      • Office procedures prior to hearing/meeting.
      • Procedures for taking testimony.
      • Procedures for decision-making.

4.0 Vouchers.

5.0 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

In response to the public health emergency in connection with the COVID-19 pandemic, the meeting will be virtual only. Applicants and members of the public may monitor and participate remotely only.

Join the hearing and meeting by using the link below, or by using the Zoom smartphone app, or by calling (312) 626-6799.

Link: https://us02web.zoom.us/j/81179503293?pwd=K3A1ZlNNaktLM3JXOE5VkFZYldzdz09
Zoom Webinar ID: 811 7950 3293
Passcode: 423017

Those who cannot attend remotely should call (920) 746-2323 or e-mail Lriemer@co.door.wi.us. We will endeavor to facilitate reasonable access for people who cannot attend remotely. Likewise, if on the day of the hearing/meeting itself you have issues with meeting “entry” methods, please call (920) 746-2323 or e-mail Lriemer@co.door.wi.us so we may assist you in entering the virtual meeting.

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, please call (920) 746-2323, or send a FAX to (920) 746-2387, or send an e-mail Lriemer@co.door.wi.us so that we may determine how to best assist you.

AGENDA Posted ___________. 2021 by _______
Call to order and declaration of quorum.

The meeting was called to order by Chairperson Frey at 3:00 p.m. on Tuesday, May 11, 2021, in the Door County Government Center Peninsula Room (C121), Sturgeon Bay, Wisconsin.

Board of Adjustment Members
Fred Frey, Chairperson
Aric Weber, Vice-chairperson
Arps Horvath
Monica Nelson
Cheryl Mick, First Alternate

Staff Present:
Richard D. Brauer, Zoning Administrator
Mariah Goode, Land Use Services Department Director

Excused
Bob Ryan

Discuss and arrive at decisions on Petitions for Grant of Variance.

2.1 Eric A. & Lisa A. Olesen Joint Family Trust Dated May 6, 1997; floodplain fill requirements, ordinary high water mark setback for accessory structures; Nasewaupee.

Motion by Horvath, seconded by Mick, to grant the petition for grant of variance. Motion carried. (4-1).

Naye: Nelson.

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

2.2 James D. & Angela Ferguson; side yard setback for principal structures; Baileys Harbor.

Motion by Weber, seconded by Horvath, to deny the petition for grant of variance. Motion carried. (4-1).

Naye: Nelson.

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

Old Business.

3.1 Read and act on Minutes of April 27, 2021, meeting.
Motion by Nelson, seconded by Weber, to approve the minutes as presented. Motion carried. (3-0). In that board members Mick and Horvath were not at the last meeting, they abstained from voting.

4.0 Other Matters.

4.1 Discuss future meeting dates.

Brauer announced that the next meeting will be held on May 25, 2021. No public hearings have been scheduled for that date. However, the board will meet to discuss policies and procedures with Door County Corporation Counsel Grant Thomas and Door County Land Use Services Department head Mariah Goode. The meeting will begin at 3:00 pm.

5.0 Vouchers.

All of the board members present submitted vouchers. Board member Mick, who participated remotely, will submit her voucher as soon as possible.

6.0 Adjournment.

Motion by Weber, seconded by Horvath, to adjourn. Motion carried unanimously (5-0). Chairperson Frey declared the meeting adjourned at 4:37 p.m.

Respectfully submitted,

Richard D. Brauer
Zoning Administrator

RDB
05/12/21
DOOR COUNTY BOARD OF ADJUSTMENT
Decision – Area Variance

Hearing Date: May 11, 2021  Decision Date: May 11, 2021

Applicants: Eric A. & Lisa A. Olesen Joint Family Trust Dated May 6, 2021

Property: 3901 Snake Island Road/ 020-65-00032

Description of variance requested:

Eric A. & Lisa A. Olesen Joint Family Trust petitions for a variance from Section 4.3(1)(a) of the Floodplain Zoning Ordinance, which states fill shall extend at least 15' beyond a structure, and Section IV.B.2.b of the Shoreland Zoning Ordinance, which requires accessory structures be set back at least 75' from the ordinary high water mark (OHWM). The petitioner proposed to replace a 22' x 28' boathouse with a 22' x 26' accessory building with upper level living quarters, as close as 11.5' from the OHWM. In addition, required floodplain fill will extend only 11.5' to the west and 13' to the south of the building. The petitioners also propose to keep a retaining wall constructed 0' from the OHWM. The property is at 3901 Snake Island Road.

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.
B. The requested variance also meets the criteria set forth in Section 7.3(4) (Variance) of the Door County Floodplain Zoning Ordinance.

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

Aric Weber: Aye
Monica Nelson: Naye
Arps Horvath: Aye
Fred Frey: Aye
Cheryl Mick: Aye

Signed ___________________________  Signed ___________________________
Chairperson                        Recording Clerk

Dated: May 25, 2021
Filed: May 26, 2021

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


PROPERTY ADDRESSES / P.I.N.s: 3901 Snake Island Road / 020-65-00032

HEARING DATE: May 11, 2021

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: This is a very narrow lot (between the road and the ordinary high water mark). Lot is being flooded by the high waters of Riley’s Bay and the wetlands located across the road to the east. The Town of Nasewaupee recently raised the surface of the town road which results in water being trapped on this property. Nearly the entire lot is within 75 feet of the ordinary high water mark.

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 _ X ___ NO _______
   
   EXPLAIN: The unique character of this property (shallow lot) prevents the owner from building in compliance.

   OR

B. Is conformity with the regulation(s) unnecessarily burdensome?
   
   YES _ X ___ NO _______
   
   EXPLAIN: Denial of the variance would be unnecessarily burdensome in that the owner will be unable to build a new structure due to required setbacks. Proposed structure will be built on the footprint of the existing boathouse.

3. **PUBLIC INTEREST/SPRIT 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 granting of the variance will allow the owner to elevate a new structure in compliance with the Door County Floodplain Zoning Ordinance. The total amount of impervious surface on the lot will not be increased. The reconstruction of a new building with improved erosion and drainage considerations will benefit the area.
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 owner obtains the appropriate zoning permits within such time.

Dated this May 12, 2021

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.
DOOR COUNTY BOARD OF ADJUSTMENT
Decision – Area Variance

Hearing Date: May 11, 2021

Decision Date: May 11, 2021

Applicants: James D. & Angela Ferguson

Property: PIN Nos. 002-22-0502/ Addresses 8058 State Highway 57

Description of variance requested:

James D. & Angela Ferguson petition for a variance from Section 3.02(3)(a) of the Door County Comprehensive Zoning Ordinance which requires principal structures be set back at least 10’ from a side property line. The petitioners propose to construct a 20’ x 30’5” two-story residential addition as close as 6.4’ from a side property line. This property is located at 8058 State Highway 57 and in a 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 not meet the criteria set forth in Section 59.694(7) Wisconsin Statutes.

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

Fred Frey: Aye
Aric Weber: Aye
Arps Horvath: Aye
Cheryl Mick: Aye
Monica Nelson: Naye

Signed ____________________________  Signed ____________________________

Chairperson Recording Clerk

Dated: May 25, 2021
Filed: May 26, 2021

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.
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: It has been shown that there are no unique physical property limitations that would prevent the owners from building a smaller addition.

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 required setbacks do limit the area available for construction; however, it would still be possible to construct an addition that complies with all required setbacks. The denial of the variance will not prevent the owner from using the property for this permitted purpose.

OR

B. Is conformity with the regulation(s) unnecessarily burdensome?
   YES _____ NO _____
   EXPLAIN: A code complying addition could be constructed.

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 ___ X ___ NO ______

EXPLAIN: Constructing an addition 6.4 feet from a side property line is not in the best interest of the community.

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

Dated this May 12, 2021

**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.
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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.
COURT OF APPEALS
DECISION
DATED AND FILED
March 23, 2021
Sheila T. Reiff
Clerk of Court of Appeals

NOTICE
This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.
A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See Wis. Stat. § 808.10 and Rule 809.62.

Appeal No. 2019AP2282
STATE OF WISCONSIN

STATE OF WISCONSIN EX REL. KATHLEEN K. NAVIS,
TERRANCE BRANDNER, MARK MOEDE, HOLLY HEBEL,
WILLIAM SCHUTTE, DONNA SCHUTTE, DONALD R. JERVIS,
 DANIEL J. MEUNIER, ANTOINETTE CHRISTENSON, GENE R. BADEAU,
 EDMUND V. SCHMIDT AND THOMAS RONDEAU,

PETITIONERS-APPELLANTS,

V.

DOOR COUNTY BOARD OF ADJUSTMENT, CARY LAURITZEN
AND CHERIE LAURITZEN,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Door County:
DAVID L. WEBER, Judge. Affirmed.

Before Stark, P.J., Hruz and Seidl, JJ.
Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Kathleen Navis, Terrance Brandner, Mark Moede, Holly Hebel, William Schutte, Donna Schutte, Donald Jervis, Daniel Meunier, Antoinette Christenson, Gene Badeau, Edmund Schmidt and Thomas Rondeau (collectively, Navis) appeal from a circuit order that affirmed the grant of a conditional use permit to Cary and Cherie Lauritzen by the Door County Board of Adjustment (the Board). We affirm upon the limited issues available under certiorari review.

BACKGROUND

¶2 The Lauritzens applied for a conditional use permit to develop and operate a recreational vehicle campground upon a vacant 21.2-acre parcel of farmland. The proposed development would have 130 campsites; a two-story check-in building containing a store, bathroom, shower and laundry facility; and another building with additional showers and bathrooms.

¶3 The Door County Resource Planning Committee (the Committee) held a public hearing to consider the permit application. The Committee granted the permit subject to sixteen conditions. Over 100 area residents and property owners appealed the Committee’s decision to the Board.

¶4 The Board held a hearing at which objectors raised concerns about: (1) adverse effects of the proposed development on property values; (2) conflict with nearby residential use from noise, dust, and campfire smoke; (3) groundwater contamination from the high-volume septic system; (4) traffic concerns relating to speed, visibility and congestion; (5) safety of pedestrians and
bicyclists traveling between the campground and town; and (6) changing the character of the neighborhood from a quiet area to a tourist destination. The Board denied the appeal, but it modified the permit to include a total of twenty-three conditions.

¶5 Navis next filed an action in the circuit court, seeking review of the Board’s decision pursuant to Wis. Stat. § 59.694(10) (2019-20). The court remanded the matter to the Board to answer two questions relating to the traffic safety conditions in the permit. In response, the Board modified two of the permit conditions. The court then issued a final order affirming the Board’s approval of the modified permit.

¶6 Navis now appeals the circuit court’s decision. She contends: (1) Door County, WI, Comprehensive Zoning Ordinance § 11.04(5)(b) (Sept. 22, 2020) (the Ordinance),
1 establishes minimum criteria an applicant must demonstrate in order to obtain a conditional use permit; (2) applicants carry the burden of proof on all of the criteria set forth in § 11.04(5)(b); (3) the applicants here failed to show the proposed use would not adversely affect property values; (4) the applicants failed to show the proposed use is similar to, and comparable with, other uses in the area; (5) the applicants failed to show the proposed use is consistent with the Door County Comprehensive and Farmland Preservation Plan (the Farmland Preservation Plan); and (6) the applicants failed to show the proposed use provides safe pedestrian access. Rather than summarize the voluminous transcripts and materials submitted to the Board,

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1 The Door County, WI, Comprehensive Zoning Ordinance is available at https://www.co.door.wi.gov/DocumentCenter/View/3239/CompZoningOrdinance-1.
we will incorporate additional facts relevant to these specific issues in our discussion below.

**DISCUSSION**

¶7 Judicial review of administrative proceedings by statute is akin to common law certiorari review. *See Williams v. Housing Auth. of the City of Milwaukee*, 2010 WI App 14, ¶10, 323 Wis. 2d 179, 777 N.W.2d 185 (2009). We review the decision of the administrative body rather than that of the circuit court. *Board of Regents v. Dane Cnty. Bd. of Adjustment*, 2000 WI App 211, ¶10, 238 Wis. 2d 810, 618 N.W.2d 537. The scope of our review is limited to considering whether the administrative body: (1) kept within its jurisdiction; (2) proceeded on a correct theory of law; (3) acted in a manner that was not arbitrary, oppressive, or unreasonable based upon its will rather than its judgment; and (4) reached a reasonable conclusion based upon evidence in the record. *Id.*

¶8 As to whether an administrative body proceeded on a correct theory of law, we will independently determine the proper interpretation of an ordinance. *Id.*, ¶11. An administrative body proceeds on a correct theory of law when it relies on the applicable ordinances and cases and applies them properly. *Edward Kraemer & Sons v. Sauk Cnty. Bd. of Adjustment*, 183 Wis. 2d 1, 8-9, 515 N.W.2d 256 (1994). As to the demonstration of a rational, nonarbitrary basis for judgment, the administrative body’s “reasoning need not be embodied in a written decision as long as it is reflected in a transcript of the proceedings.” *Lamar Cent. Outdoor, Inc. v. Board of Zoning Appeals of Milwaukee*, 2005 WI 117, ¶3, 284 Wis. 2d 1, 700 N.W.2d 87. As to whether the administrative decision was based upon evidence in the record, we must examine the record for any substantial evidence that supports the administrative body’s determination. *Currie v.*
**DILHR**, 210 Wis. 2d 380, 387, 565 N.W.2d 253 (Ct. App. 1997). The substantial evidence test does not require a preponderance of the evidence, merely that “reasonable minds could arrive at the same conclusion as the [administrative body]” based on the record before it. **Kitten v. DWD**, 2002 WI 54, ¶5, 252 Wis. 2d 561, 644 N.W.2d 649. We may not substitute our judgment for that of the administrative body as to the weight or credibility of the evidence on a finding of fact. **Advance Die Casting Co. v. LIRC**, 154 Wis. 2d 239, 249, 453 N.W.2d 487 (Ct. App. 1989).

¶9 We will structure our discussion of the six issues Navis raises on appeal around the limited questions this court may address on certiorari review. We treat Navis’s arguments regarding the minimum criteria and the burden of proof for obtaining a conditional use permit as a claim that the Board proceeded on an incorrect theory of law. We treat her arguments that four specific criteria were not met as a claim that there was not substantial evidence in the record to support the Board’s decision to grant the permit.

1. **Applicable Law for Obtaining a Conditional Use Permit**

¶10 We understand Navis to assert that the Board proceeded on an incorrect theory of law by failing to require the Lauritzens to carry the burden of proof on all of the specific criteria in the Ordinance for obtaining a conditional use permit. In particular, Navis contends the Lauritzens were required to demonstrate that the proposed project: (1) would not adversely affect nearby property values; (2) was similar to other uses in the area; (3) was consistent with the Farmland Preservation Plan; and (4) was safe for pedestrians and bicyclists.

¶11 The Ordinance requires the Committee (and ultimately the reviewing Board) to review each permit application for compliance with applicable
procedural requirements and to “determine that the proposed use at the proposed location will not be contrary to the public interest and will not be detrimental or injurious to the public health, public safety and character of the surrounding area.” Door County, WI, Comprehensive Zoning Ordinance § 11.04(5)(a). The Ordinance continues, in relevant part:

(b) To aid in the review of the proposed project against the above criteria, the Resource Planning Committee shall evaluate the following specific criteria as applicable, but shall not be limited thereto:

1. Whether the proposed project will adversely affect property values in the area.

2. Whether the proposed use is similar to other uses in the area.

3. Whether the proposed project is consistent with the Door County Comprehensive and Farmland Preservation Plan or any officially adopted town plan.

....

8. Provision of safe vehicular and pedestrian access.

Id., § 11.04(5)(b). The burden of proof to demonstrate the specific criteria listed in subsec. (b) lies with the applicant, and an applicant’s failure to satisfy the criteria “may be deemed grounds to deny” the permit. Id., § 11.04(5)(c). In addition, the Committee “may, in approving an application for a conditional use permit, impose such restrictions and conditions that it determines are required to prevent or minimize adverse effects from the proposed use ....” Id., § 11.04(6).

¶12 Navis interprets these provisions as imposing mandatory minimum standards for granting a conditional use permit, on which the applicants bear the burden of proof. That is to say, Navis contends the provisions collectively require
the Board either to deny a permit application if the applicants fail to satisfy the burden of proof on any of the criteria listed in § 11.04(5)(b) of the Ordinance, or to at least impose sufficient conditions on the permit to fully satisfy each criterion. We agree that the applicants bear the burden of proof on each criterion, but we disagree that all of the criteria in subsec. (b) must be fully satisfied before the Board may issue a permit.

¶13 We apply the same rules of interpretation to ordinances as we do to statutes. *Schwegel v. Milwaukee Cnty.*, 2015 WI 12, ¶22, 360 Wis. 2d 654, 859 N.W.2d 78. If the meaning of an ordinance is clear from its plain language, our inquiry ends. *Vilas Cnty. v. Bowler*, 2019 WI App 43, ¶17, 388 Wis. 2d 395, 933 N.W.2d 120. The language in an ordinance is to be “given its common, ordinary and accepted meaning, except that technical or specifically defined words or phrases are given those respective meanings.” *Id.* The language must also be interpreted in the context in which it is used, in relation to surrounding or closely related provisions, so as to avoid absurd or unreasonable results. *Id.*

¶14 In context, it is clear that the specific criteria set forth in § 11.04(5)(b) of the Ordinance are not mandatory minimum requirements that must all be satisfied before the Board may issue a conditional use permit. The Ordinance plainly sets forth two “determin[ations]” the Board must make before issuing a conditional use permit: (1) the proposed use at the proposed location will not be contrary to the public interest; and (2) the proposed use at the proposed location will not be detrimental or injurious to the public health, safety, and character of the surrounding area. The additional specific criteria set forth in § 11.04(5)(b) are to “aid” the Board in “evaluat[ing]” whether to make the two required determinations.
¶15 As a result, an applicant’s failure to carry the burden of proof on any particular criterion in §11.04(5)(b) of the Ordinance is not dispositive of the required determinations the Board must make. Rather, such a failure “may” be deemed grounds to deny the permit. This language indicates the Board has discretion to determine the applicability and weight to give each of the specified criteria in making its overall assessments of the impact of the proposed use on the public interest and the public health, safety, and welfare of the surrounding area. We reject Navis’s contention that the word “may” should be interpreted as mandatory because the zoning ordinance explicitly defines it as permissive. DOOR COUNTY, WI, COMPREHENSIVE ZONING ORDINANCE § 13.01(5).

¶16 The fact that the Board is authorized to make conditions to “minimize” adverse effects from the proposed use further supports our conclusion that the Ordinance does not require an applicant to prove that there would be no adverse effects related to any of the criteria before the Board can issue a permit. It would be meaningless to give the Board power to minimize adverse effects if an applicant were required to prove that there would be no adverse effects relating to any of the criteria in the first instance. Moreover, unlike the ordinance at issue in Edward Kraemer & Sons, the Ordinance here did not limit the Board’s authority to attach conditions only to “approved applications” that had already satisfied applicable criteria. Cf. Edward Kraemer & Sons, 183 Wis. 2d at 16. Rather, the Board is authorized to impose restrictions or conditions “in approving an application,” meaning that the conditions may be considered as part of the determination as to whether to grant the permit.

¶17 We additionally reject Navis’s argument that any appeal of a conditional use permit would be meaningless if none of the criteria in §11.04(5)(b) of the Ordinance actually need to be satisfied. The Board’s decision
on a conditional use permit is still subject to the requirements that it not be arbitrary and that it be supported by substantial evidence in the record.

¶18 In sum, Navis does not dispute that the Board discussed and evaluated all of the criteria outlined in § 11.04(5)(b) of the Ordinance—including the four specific criteria challenged by Navis on this appeal. The Board then imposed twenty-three conditions pursuant to § 11.04(6) all of which it deemed necessary to mitigate any adverse effects related to those criteria. Finally, the Board determined, as required by § 11.04(5)(a), that the proposed use at the proposed location would not be contrary to the public interest and would not be detrimental or injurious to the public health, safety, and character of the surrounding area. We conclude the Board relied on the relevant ordinances and applied them properly, thus proceeding on a correct theory of law.

2. Sufficiency of the Evidence

¶19 We next consider whether the evidence before the Board was such that reasonable minds could reach the conclusions that the proposed campground—subject to the twenty-three conditions imposed by the Board—would not be contrary to the public interest and would not be detrimental or injurious to the public health, safety, and character of the surrounding area. Navis does not directly address this question because her arguments are premised on the mistaken theory that there needed to be sufficient evidence presented by the Lauritzens to show that each and every criterion under § 11.04(5)(b) of the Ordinance had been individually and fully satisfied. We will reframe Navis’s arguments as a contention that the Board could not reasonably have reached its decision in light of evidence supporting her view that the proposed campground: (1) would adversely affect property values; (2) was dissimilar to and
incompatible with other uses in the area; (3) was inconsistent with the Farmland Preservation Plan; and (4) was unsafe for pedestrians and bicyclists.

A. Property Values

¶20 The Board was presented with conflicting opinions regarding the effect that the proposed campground would have on property values. On one hand, Phyllis Zatlin testified that her daughter, a realtor, had told her the project would lower property values. Craig Nelson testified about a study he read that found a high concentration of rental properties in an area (which he analogized to recreational vehicles renting campground space) decreased residential property values by fourteen percent. J.R. Jarosh testified that it was impossible to believe the value of adjacent properties would go up, although he did not think property values in Jacksonport would drop in the long term. Guy Pustaver testified that he could not imagine anyone wanting to purchase a home close to a development that can hold upward of 400 people, barking dogs, and vehicles for up to eight months of the year. Navis’s lawyer, Matthew Fleming, testified to his belief, based on involvement in past cases, that the increased concentration of people, along with the smoke and noise, would decrease nearby property values.

¶21 On the other hand, Elizabeth LeClair testified that her own business, a lodge, had also brought increased visitors and traffic to the area, but it had resulted in increased property values in the area. Lisa Bley-Bieri, who served on the planning commission, testified that she had recently sold several area

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2 The parties do not raise any objections to the hearsay nature of much of the testimony, or the lack of foundation or explanation as to the occupations of some of the people testifying or testified about. We therefore need not discuss whether the rules of evidence apply to public hearings of this nature.
properties after disclosing plans for the campground. One of the properties was within 1,500 feet of the proposed campground, and a second property was within one mile. Bley-Bieri did not believe there had been an adverse effect from the proposed campground on her ability to sell the properties, and she noted that no one had a crystal ball to show how property values would be affected in the future. Randy Halstead testified that Troy Zachariasen had told him that the proposed campground would absolutely not lower property values based upon the example of Monument Point Campground in Egg Harbor. After that campground was built, new home construction began all around it.

¶22 The testimony of LeClair, Bley-Bieri, and Halstead constituted substantial evidence upon which the Board was entitled to rely in making its decision. Reasonable minds could conclude, based on that testimony, that concerns about decreased property values were too speculative to preclude determinations that the proposed campground would not be contrary to the public interest and would not be detrimental or injurious to the public health, safety, and character of the surrounding area.

B. Other Uses in the Area

¶23 The Board was presented with evidence that there were eight other campgrounds between four and eight miles from the Lauritzen’s proposed campground. Navis argues that the Board should not have considered any of those campgrounds as other uses in the area because they were not located in the immediate surrounding area of the proposed site. Consistent with the Ordinance, however, it was well within the Board’s discretion to determine how wide a geographical area to consider in evaluating comparable uses. In addition, the Board could appropriately consider the impact other campgrounds had in their
own immediate areas as analogous to how compatible the Lauritzens’ proposed campground would be with nearby residential properties.

¶24 Moreover, even if the Board had limited itself to considering the properties closest to the proposed site as the appropriate comparison area, it does not follow that the lack of other nearby campgrounds would preclude the conditional use permit. The fact that a particular use may be dissimilar to other uses in the area does not compel the conclusion that it would be incompatible with other uses in the area or—more to the point—that it would detrimental to the public interest.

C. Farmland Preservation Plan

¶25 A staff report by Door County Land Use Services stated that the proposed site was located within the Town of Jacksonport “Core Area,” but it was also designated as “Rural/Agricultural” for future land use under the Farmland Preservation Plan. The Core Area designation in the Farmland Preservation Plan is defined as an area of existing built-up communities and planned expansion areas for potential future development. The Farmland Preservation Plan states that areas designated as Rural/Agricultural for future land use are not planned for nonagricultural use within the next fifteen years. The staff report suggested that agricultural and related operations in these areas should be protected by ensuring development is at low-density levels.

¶26 It appears that the Farmland Preservation Plan may be internally inconsistent, to the extent it designates the property both as part of the Core Area and also Rural/Agricultural. That is, the proposed use may be consistent with the Plan with respect to appropriate uses for the Core Area, but inconsistent with the Plan with respect to appropriate uses for Residential/Agricultural areas.
¶27 We further note that the proposed site is zoned as “Mixed Use Commercial” under the Ordinance. See DOOR COUNTY, WI, COMPREHENSIVE ZONING ORDINANCE § 2.03(17). Campgrounds are identified as permissible conditional uses in Mixed Use Commercial zones. Id., § 2.05(3)(a). The only agricultural uses permissible in Mixed Use Commercial zones are farm markets and greenhouses. Id. No other agricultural uses, including farming, are allowed in Mixed Use Commercial zones. Id.

¶28 We again emphasize that the issue is not whether there was sufficient evidence to prove that the proposed campground was consistent with the Farmland Preservation Plan. Rather, the issue is whether reasonable minds could conclude the proposed campground was not against the public interest, notwithstanding evidence that it may have conflicted to some degree with the Farmland Preservation Plan. We are satisfied that reasonable minds could reach the conclusion that any conflict with the Farmland Preservation Plan was insignificant to the public interest, given the internal inconsistency in the Plan and, in any event, the fact that the land was not zoned for farming.

D. Safe Pedestrian Access

¶29 The permit application stated that vehicular access to the campground would be through an existing driveway connecting to Bagnall Road, and that no sidewalks, paths, or other means of pedestrian access would be provided. Multiple concerns were expressed during the administrative proceedings about the lack of safe pedestrian access to the proposed campground. Navis asserts it was “almost universally agreed” due to a variety of factors—including the speed at which vehicles travel along Bagnall Road, a curve in the road reducing visibility near the entrance driveway, and narrow shoulders—that it
would not be safe for pedestrians to walk along Bagnall Road between the proposed campsite and downtown Jacksonport.

¶30 As a result, the Board imposed two conditions relating to vehicular and pedestrian safety. First:

The applicants shall submit a written petition to the Town of Jacksonport, within 45 days of the issuance of the conditional use permit, requesting the Town enact an ordinance to enforce the prohibition on making a left turn onto Bagnall Road when exiting the campground property. If the applicants fail to timely submit the written petition to the Town of Jacksonport, the conditional use permit will not remain in effect. If the applicants timely submit the written petition to the Town of Jacksonport, but the Town fails to take substantive action within 12 months of the issuance of the conditional use permit, the conditional use permit will remain in effect. The applicants must provide proof to the Door County Land Use Services Department that the written petition was timely submitted.

Second:

The applicants shall submit a written request to the Wisconsin Department of Transportation (WisDOT), within 45 days of the issuance of the conditional use permit, asking the WisDOT to review the proposed development and determine whether any improvements should be made to increase safety of the Bagnall-Road and State Highway 57 intersection. If the applicants fail to timely submit the written request to the WisDOT or the WisDOT fails to provide a substantive written response within 12 months of the issuance of the conditional use permit, the conditional use permit will not remain in effect. The applicants must provide proof to the Door County Land Use Services Department that the written request was timely submitted and that the WisDOT timely acted on the request. If any improvements are recommended or required by the WisDOT, the applicants are responsible for implementation/installation of any improvements recommended or required by the WisDOT and the improvements shall be implemented/installed before the campground is open to the public.
¶31 Reasonable minds could conclude that the access point to the campground would be reasonably safe for pedestrians, and not contrary to public interest, if it complied with those conditions, including following any directives the Wisconsin DOT eventually issued. We conclude that the Board’s decision to grant the conditional use permit was supported by substantial evidence in the record. Accordingly, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. See Wis. Stat. Rule 809.23(1)(b)5. (2019-20).