

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 conduct a meeting on Tuesday, May 26th, 2020 beginning at 2:00 p.m. In response to the public health emergency in connection with the COVID-19 pandemic, the meeting will be virtual only. The board will be assisted in conducting the meeting by staff who will be located in the Door County Government Center County Board Room (C-101, First Floor) and Peninsula Room (C-121, First Floor) at 421 Nebraska Street, Sturgeon Bay, Wisconsin. Applicants and members of the public may monitor and participate remotely only.

To attend via computer, go to <https://globalpage-prod.webex.com/join> ; enter the meeting number, 625 857 126; and then password, Boa52620 (26252620 from phones and video systems). To connect via telephone, call (408) 418-9388, and when prompted enter the access/meeting code, 625 857 126.

Those who cannot attend remotely should call (920) 746-2323 or e-mail lrimer@co.door.wi.us . We will endeavor to facilitate reasonable access for people who cannot attend remotely.

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 Chad Fawcett; accessory building encroach into setback from ordinary high water mark; 4012 Sand Bay Point Road; Nasewauppee.
- 3.0 Old Business.
 - 3.1 Read and act on Minutes of May 12, 2020 meeting.
 - 3.2 Final disposition of the following cases considered by the Board of Adjustment at the May 12, 2020 meeting: Michael Lorenz, Jonathan and Carol Wall, Mary J. Schramm, Lois Gies and Joseph Dalsing, Gaetano and Amanda Auricchio, Maxine Louise Keller Kottage Trust.
- 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

* Application materials may 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.

NOTICE OF A PUBLIC HEARING BEFORE
THE DOOR COUNTY BOARD OF ADJUSTMENT

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 public hearing to be held by the Door County Board of Adjustment on Tuesday, May 26, 2020, will be virtual only.** The board will be assisted in conducting the hearing by staff who will be located in the Door County Government Center County Board Room (C101, 1st Floor) and Peninsula Room (C121, 1st Floor) at 421 Nebraska St., Sturgeon Bay, WI. "Virtual only" is exactly what the name implies: the hearings will be conducted by means of remote communication (i.e., teleconference or video conference).

The board business meeting to be held immediately subsequent to the hearing will also be conducted by teleconference or video conference only. Applicants and members of the public may monitor and participate in the meeting remotely only.

To attend the hearing and meeting via computer, go to <https://globalpage-prod.webex.com/join> ; enter the meeting number, 625 857 126; and then the password, Boa52620 (26252620 from phones and video systems). To connect via telephone, call (408) 418-9388, and then when prompted enter the access/meeting code, 625 857 126.

The hearing will begin at 2:00 p.m. to give consideration to the application listed below for a variance, as specified in the Door County Comprehensive Zoning and the Door County Shoreland Zoning Ordinances:

TOWN OF NASEWAUPEE

Chad Fawcett petitions for a variance from Section IV.B.2.b. of the Door County Shoreland Zoning Ordinance which requires accessory buildings be set back at least 75 feet from the ordinary high water mark. Mr. Fawcett proposes to relocate and convert a 24' x 24' boathouse to an accessory structure which would be located 13 feet from the ordinary high water mark of Green Bay. This property is located at 4012 Sand Bay Point Road in Section 30, Town 28 North, Range 25 East, and in the Town of Nasewaupée.

The purpose of a hearing is to allow parties to explain how their interests are affected, how the public is affected, and to bring out any facts pertinent to the case related to public health, safety, convenience, and general welfare.

All interested parties are urged to view the hearing and/or give oral testimony remotely via the free software application WebEx, which you may load onto your smartphone ("Cisco WebEx Meetings") and/or access from your computer (<https://www.webex.com/>). In-person attendance and testimony will not be permitted. Anyone wishing to offer oral testimony will need to register in advance with the Door County Land Use Services Dept.

Persons who intend to participate in a hearing are advised to be familiar with the Board of Adjustment Guidelines for Virtual Hearings. The Guidelines, which include information on how to register to testify at a hearing, may be found at: <https://www.co.door.wi.gov/AgendaCenter> .

Written testimony will be accepted on 8 1/2" x 11" paper only and must be received by 3:30 p.m. the day before the hearing. Anonymous correspondence will not be accepted. Letters may be made available for public inspection upon request filed with the Land Use Services Dept. Letters will be entered into the hearing record, but individual letters will not be read aloud. **Please note: any**

correspondence or testimony you may have submitted for any town-level proceedings regarding these matters does NOT get forwarded to the county.

All application materials may be viewed by request. Application materials may also be viewed online approximately four business days before the hearing at: <https://www.co.door.wi.gov/AgendaCenter>. Additional materials may be posted up until 4:30 p.m. the day before the hearing.

A regular business meeting of the Door County Board of Adjustment shall follow the public hearings.

Those who cannot attend remotely should call (920) 746-2323 or e-mail lriemer@co.door.wi.us so we may endeavor to facilitate reasonable access for you.

The list of names to whom this notice was sent via regular mail is available upon request filed with the Door County Land Use Services Dept.

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
Phone: (920) 746-2323
FAX: (920) 746-2387

Publication Dates: May 9, 2020 & May 16, 2020

05/05/20

RB/lr

Door County Resource Planning Committee and Board of Adjustment Guidelines for Hearings Conducted “Virtually”

In light of the WDHS 03-24-2020 “Safer at Home Order,” and to mitigate the impact of COVID-19, Resource Planning Committee and Board of Adjustment hearings and meetings will until further notice be conducted as teleconference or video conference. Members of the public may join hearings and meetings to observe or participate remotely via the free software application WebEx. Meeting numbers and passwords may be found on the hearing notice or business meeting agenda.

General Information Regarding Testimony

- Written testimony must be mailed, e-mailed, or FAXed to the Door County Land Use Services Department, and must be received by 3:30 p.m. the day prior to the hearing.

*Mail: Door County Land Use Services, 421 Nebraska Street, Door County Government Center, Sturgeon Bay, WI, 54235. Phone: (920) 746-2323. FAX: (920) 746-2387.
E-mail: lriemer@co.door.wi.us .*

- **Anyone wishing to offer oral testimony for a hearing must register in advance. Registration must be received by 12:00 p.m. (noon) the day before the hearing.** You may register via mail, phone, FAX, or e-mail (please see above for all contact information options). When registering to testify, please provide the following information:
 - Full name.
 - Full mailing address.
 - E-mail address.
 - Phone number.
 - Case/project about which you wish to provide testimony.
 - Whether you wish to speak in favor or in opposition.
- All live testimony will use WebEx, a free software application you may load onto your smartphone (“Cisco WebEx Meetings”) and/or access from your computer (<https://www.webex.com/>). You may also simply call in via WebEx. Meeting codes and passwords will also allow anyone interested to simply observe hearings. For those registered with our department to testify (as outlined above), when we call upon you, WebEx will allow the committee to hear you (and see you, if you are using a video option).
- You will obviously not have the ability to give committee members handouts. Any materials you wish the committee to review and have part of the record, including anything you plan on using as a visual aid during testimony, must be received by 3:30 p.m. the day prior to the hearing so we may post them on-line.

Hearing Format

At the start of the meeting, the Chair will explain the process that will be followed for the hearings.

Staff will provide an overview of each project at the start of that particular hearing. Testimony for each hearing will be taken as follows:

- Applicant, followed by others in favor of the project.
- Testimony from anyone in opposition.
- A rebuttal round will occur if testimony in opposition has been presented.
- All testimony will be taken in the order shown on the registration list.
- Only one person at a time may speak. Please mute yourself when it is not your turn to speak.

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

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MAY -5 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 Chad Fawcett Telephone No. 262-328-4991
Mailing Address 825 Hawks Ridge Rd
City Brookfield State WI Zip 53045
hereby petition(s) the Door County Board of Adjustment for a variance from Section (s) _____ (SEE ATTACHMNET A)

of the Door County Zoning Ordinance which requires _____ (SEE ATTACHMNET A)

(I) (We) propose to _____ (SEE ATTACHMNET A)

LOCATION:

The description of the property involved in this petition is located at:
Fire # 4012 Road Sand Bay Point Rd Township Nasawaupee
Govt Lot _____ or 1/4 - 1/4 Section _____ Town _____ North, Range _____ East
Tax Parcel No. 020-650-3002 2020
Zoning District _____ Lot Size 11,700 sq feet
Existing use of structure or land in question Boathouse

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:

See Attached.

FOR OFFICE USE ONLY
Receipt No. 1384 Fee 500 Date 5-5-20
Hearing Advertised Dates: _____
Hearing Date _____
Decision _____

TOWN OF: _____
OWNER: _____
SECTION 7 N/R _____ E _____
PARCEL NO.: 0

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DOOR COUNTY
LAND USE SERVICES DEPARTMENT

(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 neighborhood, the 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:

See attached.

- 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:

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.

PETITION FOR GRANT OF VARIANCE

CHAD FAWCETT TRUST

ATTACHMENT A

The applicant hereby petitions the Door County Board of Adjustment for a variance from Section IV.B.2.b. of the Door County Shoreland Zoning Ordinance. According to Section IV.B.2.b. of the Door County Shoreland Zoning Ordinance all accessory structures shall be located at least 75' from the ordinary high water mark of any navigable water.

The applicant proposes relocate and convert a 24' x 24' boathouse which is located at the ordinary high water mark to a 24' x 24' accessory structure which would be located as close as 13' from the ordinary high water mark of Green Bay.

ORDINANCE BACKGROUND:

Since the structure will not be located within the vegetative buffer zone and viewing corridor (within 35' from the OHWM) it does not meet the standard for a boathouse (which is exempt from the 75' water setback); therefore, the variance shall be to place an accessory structure (***that may be used for the storage of any items, no longer only for boats***) less than 75' from the OHWM.

Section IV.B.2.d.1): "Exempt structures. All of the following structures are exempt from the shoreland setback standards in par. b above: 1) Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation [§ 80.01(1d), Wis. Stats.]. a) This section does not prohibit repair and maintenance of boathouses located above the ordinary high-water mark. b) The owner of an existing boathouse in the shoreland setback area that has a flat roof may use the roof as a deck if the conditions set forth in § 59.692 (1o), Wis. Stats. are met. c) Boathouses shall be designed, constructed and used solely for the storage of boats and related equipment. Features (e.g., fireplaces and patio doors) inconsistent with these uses are prohibited. d) The use of boathouses for human habitation is prohibited. e) Boathouses shall not be constructed or placed below the ordinary high water mark of any navigable water. 12 f) Boathouses shall be accessible by boats from navigable water, and shall not exceed one story. g) New boathouses shall have a pitched roof, no flatter than 4/12 pitch. h) Earth tone colors are required for all exterior surfaces of a boathouse. i) Boathouses shall be constructed in conformity with local floodplain zoning standards."

Section IV.B.3.b.1): "Land that extends from the ordinary high water mark to a minimum of 35 feet inland is hereby designated as a vegetative buffer zone."

"Access and viewing corridor" (§ NR 115.03(1d), Wis. Adm. Code): A strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

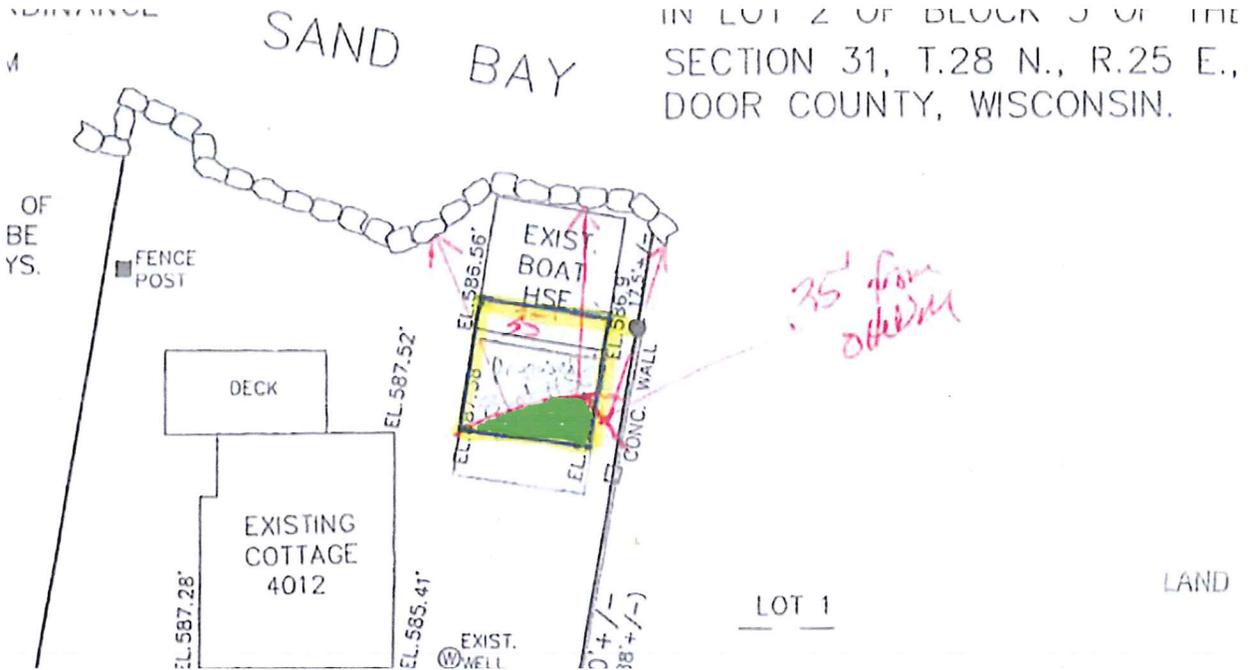
"Boathouse" (§ NR 115.03(1h), Wis. Adm. Code): A permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

PROPERTY BACKGROUND:

In 2016-2017 there was a tree cutting violation within the vegetative buffer zone which resulted in an after-the-fact alternative vegetation management permit and Restrictive Covenant recorded on June 21, 2017, Doc. # 805533, which required vegetation to be replanted and maintained within the shoreland buffer zone.

Description of Project: The proposed project is to move our boathouse to the proposed location below (see highlighted in yellow in snapshot of Site Plan). We are not changing the existing structure just moving it to a new location. We are requesting a variance for the green shaded part in the picture below which is the only part of our proposed project which is in violation of the ordinance.

Why this project: We are moving the boathouse to avoid collapse and future damage caused by the high water levels. Each time we have a high wind, more of the foundation gets eroded underneath and our garage door gets pounded by the waves resulting in water flushing throughout the inside of our boathouse. This has prevented us from storing our boats and related equipment in it.



Petition for Grant of Variance - Attachments:

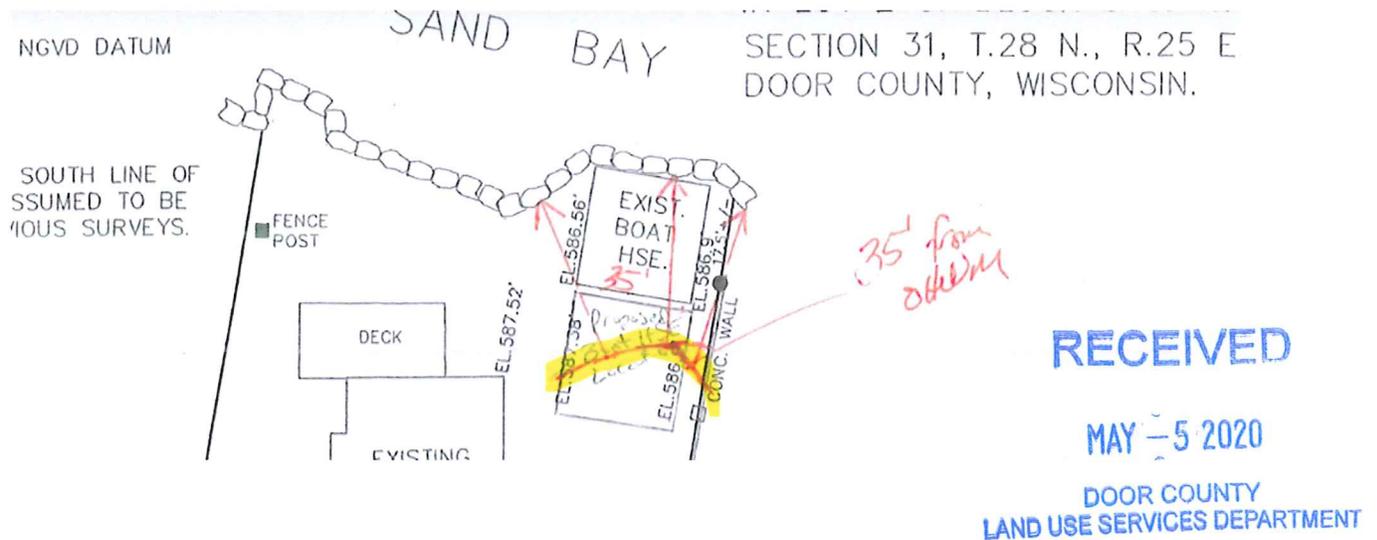
3)(a) Unique property limitations:

The shape of our lot and the resulting northward curve of our OHWM is the limiting factor in being able to comply with ordinance. Please see the highlighted OHWM line drawn below to recognize the northward curve. This northward curve and the ordinance stating the boathouse must be entirely within 35' of the high water would not allow us to move our boathouse far enough away from the shore to prevent future damage to our boathouse structure.

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DOOR COUNTY
LAND USE SERVICES DEPARTMENT



3)(b) No Harm to Public Interests:

A variance will not be contrary to the public interest. It will be in favor of public interest by moving a building structure farther away from the water and natural shoreline. This will minimize the continued property damage compared to keeping it in its current location or moving it within the current stated ordinance.

3)(c) Unnecessary Hardship:

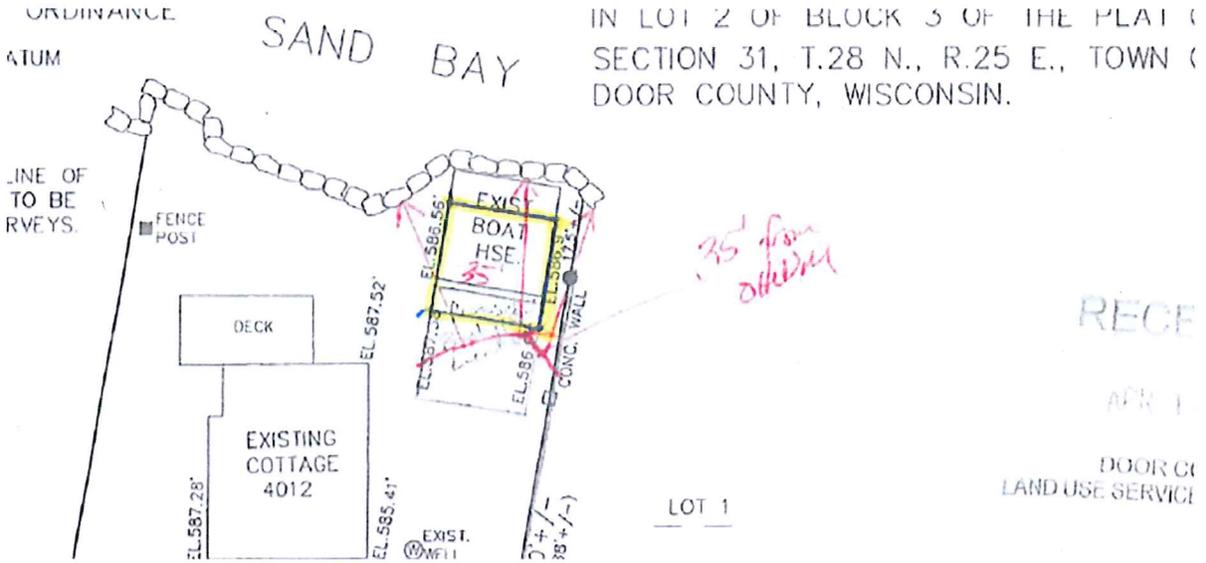
Our unnecessary hardship exists because the current ordinances are preventing us from moving our boathouse in a safe location while still being able to utilize it as a boathouse. The current ordinance leaves us three options:

- 1) Leave our boathouse in its current location – it will eventually collapse into the lake if we do not move it. Please reference the pictures below for what has happened in its current location.
- 2) Move it away from the water but entirely within 35' of the OHWM – this is only moving our boathouse back about 4' which still leave us susceptible to a reoccurrence of the damage shown in the pictures and thus unable to store our boats and related equipment and rendering us unable to use our property for its permitted purpose. See Exhibit #1 below showing the new location of the boathouse if placed entirely within 35' of the OHWM, outline highlighted in yellow.
- 3) Move it farther than 75' away from the OHWM – doing this would be an unnecessary hardship, preventing us from having our boathouse close to the shoreline so that we can use it for its original permitted purpose of storing boats and related equipment.

None of these options accomplish the goal of saving our boathouse from collapse or future damage while also continuing to use it as a boathouse which is why a variance is necessary.

Below are pictures of what has happened to the outside of our boathouse and the erosion occurring. It is very evident in the pictures that moving the boathouse back 4' (within the current ordinance) would not move us back far enough from future damage. Because of this we are unable to store our boats and related equipment thus leaving us without any use that is permitted for our boathouse structure.

Exhibit #1: Where our boathouse location (highlighted in yellow) would have to go to be entirely within 35' of the OHWM as stated by the ordinance.



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 APR 1
 DOOR COUNTY
 LAND USE SERVICE

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 DOOR COUNTY
 LAND USE SERVICES DEPARTMENT

5/05/20 08:40:58

ASSESSMENT INQUIRY
0206503002 R 2020

INQ091
12

N 4012 SAND BAY POINT RD
FAWCETT, CHAD TRST

Geo.Loc: 15 020 4 28 25 30 4 04 001

MAIL TO:

3040

FAWCETT
CHAD TRST

LEGAL DESCRIPTION

525 HAWKS RIDGE RD
BROOKFIELD WI 53045

30 28 25 AC .00

SAND BAY POINT

LOT 2

BLK 3

S.30-28-25

DOC# 805533

RC

DOC# 798282

WD

V 307 P 620

MORE LEGAL AVAILABLE

CURRENT TAX ASSESSMENT AS OF 2019

CODE	ACRES	LAND	IMPROVE	TOTAL
L1		153600	94900	248500

BILL NO:

COMMENTS

TOTALS 153600 94900 248500

F3-Exit F5-Owners F7-Tax Detail
F11-Districts F12-Prev Scrn
F21-Geo Location

F8-Legal F9-Directory
F17-Fire# F18-DOA Site
F6-Vol/Page Detail

Fawcett

Printed 05/05/2020 courtesy of Door County Land Information Office

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



Door County, Wisconsin

... for all seasons!



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Fawcett

Printed 05/05/2020 courtesy of Door County Land Information Office

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



14
Door County, Wisconsin
... for all seasons!

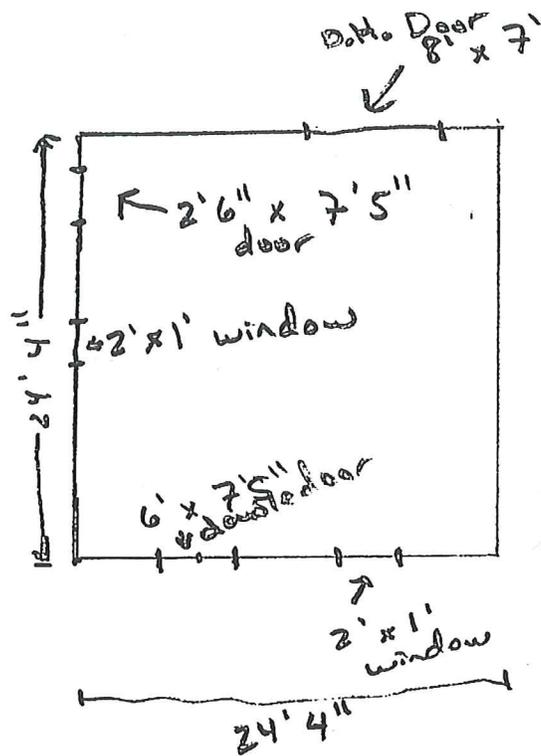


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Chad Fawcett

4/13/2020

Floor Plan:



Scale:

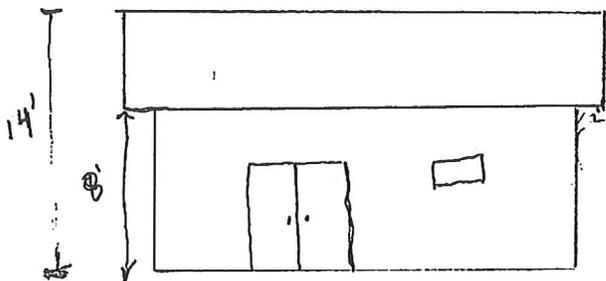
1" = 10'

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DOOR COUNTY
LAND USE SERVICES DEPARTMENT

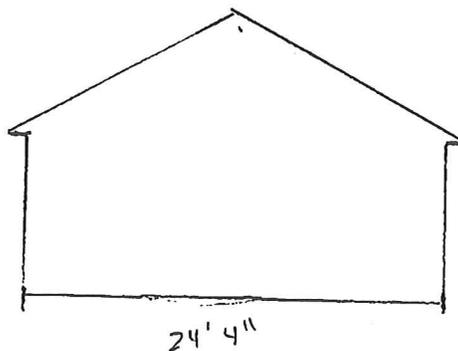
Front Elevation View:



Scale:

1" = 10'

East Side Elevation View:





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

May 12, 2020

1.0 Call to order and declaration of quorum.

The meeting was called to order by Chairperson Frey at 9:00 a.m. on Tuesday, May 12, 2020, in the County Board Room (C-101) 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
Bob Ryan

Staff

Richard D. Brauer, Zoning Administrator
Sue Vandengenberg, Zoning Administrator
Mariah Goode, Land Use Services Department
Director

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

2.1 Michael Lorenz; build a detached garage that will not comply with Door County Comprehensive Zoning Ordinance standards for accessory structures constructed on vacant lots; Sturgeon Bay.

Motion by Ryan, seconded by Young, to grant the petition for grant of variance. Motion carried. (3-2).

Aye: Frey, Young, Ryan.
Naye: Weber, Nelson.

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

2.2 Jonathan and Carol Wall; encroach into setback from private road; Liberty Grove.

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

Aye: Frey, Weber, Nelson, Ryan.
Naye: Young.

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

2.3 Mary J. Schramm; encroach into setback from ordinary high water mark; Sevastopol.

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

Aye: Frey, Weber, Young, Nelson
Naye: Ryan.

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

2.4 Lois Giese & Joseph Dalsing (on behalf of Scott Giese & Barbara Johnson-Giese); encroach the setback from the ordinary high water mark setback of a navigable stream; Union.

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

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

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

2.5 Gaetano and Amanda Auricchio; encroach into setback from ordinary high water mark of Green Bay; Gibraltar.

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

Aye: Frey, Weber, Young, Ryan.

Naye: Nelson.

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

2.6 Maxine Louise Keller Smith Kottage Trust; encroach into setback from ordinary high Water mark of a navigable stream; Nasewaupee.

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

Aye: Frey, Weber, Young, Ryan.

Naye: Nelson.

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 March 10, 2020, meeting.

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

3.2 Final disposition of the following case considered by the Board of Adjustment at the March 10, 2020, meeting: The Raymond P. & Barbara J. Hansen Trust.

Motion by Ryan, seconded by Weber, to approve the final disposition of the case. Motion Carried unanimously.

4.0 Other Matters.

4.1 Announce next meeting.

Brauer announced that the next meeting will be held on May 26, 2020. One variance case has been scheduled for public hearing that evening. This will also be a virtual meeting.

5.0 Vouchers.

All of the board members present submitted vouchers. Board members Monica Nelson and John Young, who participated virtually, will either mail in their vouchers or drop them off at the Door County Government Center drop box.

6.0 Adjournment.

Motion by Weber, seconded by Nelson, to adjourn. Motion carried unanimously (5-0). Chairperson Frey declared the meeting adjourned at 1:40 p.m.

Respectfully submitted,

Richard D. Brauer
Zoning Administrator

RDB
05/13/20

DOOR COUNTY BOARD OF ADJUSTMENT
Decision – Area Variance

Hearing Date: May 12, 2020 Decision Date: May 12, 2020

Applicants: Michael Lorenz

Property: PIN 024-02-27272612G1 / 2478 South Lake Michigan Drive

Description of variance requested:

Michael A. Lorenz petitions for a variance from section 3.12(4) of the Door County Comprehensive Zoning Ordinance which requires accessory buildings that are constructed on vacant lots to comply with specific standards of the ordinance. This section of the ordinance limits the size of the buildings to 120 square feet, limits the height of the buildings to 8 feet 6 inches, allows only one entrance door, not to exceed 6 feet in width, and prohibits windows, skylights, patio doors, or other glazing in the building along with other limitations. Mr. Lorenz is proposing to construct a 672 square foot detached garage on a vacant parcel that is located across the road from his existing residence. The garage would be 18.5 feet high, would contain two 8.5 foot wide garage doors, and a total of 8 windows. This property is located at 2478 South Lake Michigan Drive in Section 27, Town 27 North, Range 26 East, and in a Single Family Residential – 20,000 (SF20) 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
Bob Ryan:	Aye
John Young:	Aye
Monica Nelson:	Naye
Aric Weber:	Naye

Signed _____

Signed _____

Chairperson

Recording Clerk

Dated: May 26, 2020

Filed: May 27, 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: Michael Lorenz

PROPERTY ADDRESSES / P.I.N.s: 2478 S. Lake Michigan Drive/ 024-02-27272612G1

HEARING DATE: May 12, 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: The property is bisected by a town road. If the property was not bisected by the town road, this building would be allowed. Space limitations do not allow for construction of a garage on the same side of the road as the residence.

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 main reason for the subject ordinance standards is to discourage people from using accessory buildings on vacant lots as living quarters. That is not the intended purpose here. The property owners will not be using this property unless a variance is granted. The building will clearly be used as a garage by the residence located across the road.

OR

- B. Is conformity with the regulation(s) unnecessarily burdensome?**

YES X NO _____

EXPLAIN: If the lot was not bisected by the town road, the building would be allowed.

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 construction of the garage will have minimal impact on the environment. Garage will not be an eyesore and two older buildings will be removed from the property. The project was supported by the Town Board and a neighbor. The project will not be out of character with the surrounding area. The project will protect property values and the property tax base.

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 May 13, 2020

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 12, 2020 Decision Date: May 12, 2020

Applicants: Jonathan and Carol Wall

Property: PIN 018-04-35332814B2 / 12765 Door Bluff Road

Description of variance requested:

Jonathan & Carol Wall petition for a grant of variance from section 3.05(4) of the Door County Comprehensive Zoning Ordinance which requires buildings be set back at least 30 feet from the edge of a described private road easement. The petitioners propose to construct a two-story detached garage up to the edge of a described private road easement (0 foot setback). This property is located at 12765 Door Bluff Road in Section 35, Town 33 North, Range 28 East, and in a Single Family Residential – 30,000 SF30) 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
Bob Ryan:	Aye
John Young:	Naye
Monica Nelson:	Aye
Aric Weber:	Aye

Signed _____

Signed _____

Chairperson

Recording Clerk

Dated: May 26, 2020

Filed: May 27, 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: Jonathan and Carol Wall

PROPERTY ADDRESSES / P.I.N.s: 12765 Door Bluff Road / 018-04-35332814B2

HEARING DATE: May 12, 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: The slope of the lot and location of the power lines limit the area available for construction. The lightly travelled private road only serves one lot beyond the subject property.

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

OR

- B. Is conformity with the regulation(s) unnecessarily burdensome?**

YES X NO _____

EXPLAIN: The denial of a variance would be unnecessarily burdensome in that it would prevent the owners from building on the only portion of the lot that is relatively flat. Building on the slope would create a significant land disturbance and would also involve the relocation of the existing power lines. The private road only serves on residence beyond the proposed building site.

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 request is supported by the Town Board. The proposed building is not out of character with other buildings in the area. This is the logical place to construct a garage of reasonable dimensions. The proposed setback is from a road that is very lightly travelled.

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 May 13, 2020

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 12, 2020 Decision Date: May 12, 2020

Applicant: Mary J Schramm

Property: PIN 022-03-03282764 / 5490 West Shore Drive

Description of variance requested:

Mary J. Schramm petitions for a variance from section IV.B.2.c.2) of the Door County Shoreland Zoning ordinance which requires structures be located at least 51.5 feet from the ordinary high water mark of Clark Lake. The petitioner proposes to construct a 26' x 36' two story single family residence with a 5' x 5' entry stoop on the north side of the residence which will be located as close as 36 feet from the ordinary high water mark, and the west side of the residence (located outside the nonconforming footprint of the original residence) will be located 44' from the ordinary high water mark. This property is located at 5490 West Shore Drive in Section 3, Town 28 North, Range 27 East, and in a Single Family Residential – 20,000 (SF20) 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
Bob Ryan: Naye
John Young: Aye
Monica Nelson: Aye
Aric Weber: Aye

Signed _____
Chairperson

Signed _____
Recording Clerk

Dated: May 26, 2020
Filed: May 27, 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: Mary J. Schramm

PROPERTY ADDRESSES / P.I.N.s: 5490 West Shore Drive / 022-03-03282764

HEARING DATE: May 12, 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: There are required road setbacks on two sides (north and west). Relocating to a complying building location would cause a considerable land disturbance on the property and would result in the removal of a significant number of trees. The narrow building envelope currently contains the well and septic system.

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:

OR

- B. Is conformity with the regulation(s) unnecessarily burdensome?**

YES X NO _____

EXPLAIN: The denial of a variance would be unnecessarily burdensome in that relocating the residence to a complying building location would cause a considerable land disturbance on the property and would result in the removal of a significant number of trees. The proposal is to construct a residence further from the ordinary high water mark than the existing residence. Constructing the home in the proposed location will assure that it will not be located in the floodplain.

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 building site will not be located in the floodplain. The proposal is to move the proposed site further from the ordinary high water mark than the existing residence. There will be very little change in the size of the building footprint and therefore, no significant change in the amount of impervious surface on the property. There will be minimal disturbance of the site.

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 May 13, 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.

DOOR COUNTY BOARD OF ADJUSTMENT
Decision – Area Variance

Hearing Date: May 12, 2020 Decision Date: May 12, 2020

Applicants: Lois Gies & Joseph Dalsing (on behalf of Scott Giese & Barbara Johnson-Giese)

Property: PIN 026-00-32262342M6 / 225 Bay Chapel Lane

Description of variance requested:

Lois Giese & Joseph Dalsing (on behalf of Scott Giese & Barbara Johnson-Giese) petition for a variance from section IV.B.2.b. of the Door County Shoreland Zoning Ordinance which requires structures be set back at least 75 feet from the ordinary high water mark of a navigable stream on the north side of the property. The petitioners propose to construct a 31' x 41' two story attached garage, a 10' x 21' laundry room/entryway, and a 4.5' x 10' covered porch which will be located as close as 48' from the ordinary high water mark of the navigable stream. This property is located at 225 Bay Chapel Lane in Section 32, Town 26 North, Range 23 East, in the Town of Union.

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
Bob Ryan:	Aye
John Young:	Aye
Monica Nelson:	Aye
Aric Weber:	Aye

Signed _____

Signed _____

Chairperson

Recording Clerk

Dated: May 26, 2020

Filed: May 27, 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: Lois Gies and Joseph Dalsing (on behalf of Scott Giese and Barbara Johnson-Giese)

PROPERTY ADDRESSES / P.I.N.s: 225 Bay Chapel Lane / 026-00-32262342M6

HEARING DATE: May 12, 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: The navigable stream is actually more of a drainage ditch that runs along the northern lot line. There are setbacks from the ordinary high water marks of the navigable stream and Green Bay on this property. Irregular shaped lot. Addition will be located further from the stream than the existing residence.

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

OR

- B. Is conformity with the regulation(s) unnecessarily burdensome?**

YES X NO _____

EXPLAIN: The denial of a variance would be unnecessarily burdensome in that the irregular shaped lot and the required setbacks from the ordinary high water marks of the navigable stream and Green Bay eliminate the possibility of adding onto this residence.

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 a minimal amount of impervious surface added to the property for this project and for that reason, will have minimal impact on the stream. The proposed addition will comply with the required setback from Green Bay. The project will aid in implementing the county development plan. The project will protect property values and the property tax base. The project will promote planned and orderly land use development and will not be out of character with the surrounding area. This project is within the spirit and intent of the county ordinances.

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 May 13, 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.

DOOR COUNTY BOARD OF ADJUSTMENT
Decision – Area Variance

Hearing Date: May 12, 2020 Decision Date: May 12, 2020

Applicants: Gaetano and Amanda Auricchio

Property: PIN 014-25-0004A / 8479 White Cliff Road

Description of variance requested:

Gaetano and Amanda Auricchio petition for a variance from section IV.B.2.b. of the Door County Shoreland Zoning Ordinance which requires accessory structures be set back at least 75 feet from the ordinary high water mark of Green Bay. The petitioners propose to construct a 16' x 35' in-ground pool 50 feet from the ordinary high water mark. This property is located at 8479 White Cliff Road in Section 18, Town 30 North, Range 27 East, and in a Single Family Residential – 20,000 (SF20) 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
Bob Ryan:	Aye
John Young:	Aye
Monica Nelson:	Naye
Aric Weber:	Aye

Signed _____

Signed _____

Chairperson

Recording Clerk

Dated: May 26, 2020

Filed: May 27, 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.

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

APPLICANTS NAMES: Gaetano and Amanda Auricchio

PROPERTY ADDRESSES / P.I.N.s: 8479 White Cliff Road / 014-25-0004A

HEARING DATE: May 12, 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 _____ NO X

EXPLAIN: Though not convenient or in the best interests of pool safety, it has been shown that the pool could be constructed in a complying location.

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 X

EXPLAIN: The addition of a pool is a matter of personal choice and preference. The property can still be used as a residential lot without the addition of a pool.

OR

- B. Is conformity with the regulation(s) unnecessarily burdensome?**

YES _____ NO X

EXPLAIN: Any development within the 75 foot setback must be carefully considered because of the cumulative impacts on water quality. The proposed use does not fit with the ordinance goal of maintaining water quality.

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 request to place the pool on the existing driveway will not increase the total amount of impervious surface on the lot. The request is based on personal preference and is not within the spirit and intent of the zoning ordinances.

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 13, 2020

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 12, 2020 Decision Date: May 12, 2020

Applicants: Maxine Louise Keller Kottage Trust

Property: PIN 0020-02-32282531H / 7776 Haines Road

Description of variance requested:

Maxine Louise Keller Smith Kottage Trust petitions for a variance from section IV.B.2.b. of the Door County Shoreland Zoning Ordinance which requires accessory structures be located at least 75 feet from the ordinary high water mark of a navigable creek. The petitioners propose to construct a 20' x 24' detached garage as close as 53 feet from the ordinary high water mark of May Creek. This property is located at 7776 Haines Road in Section 32, Town 28 North, Range 25 East, in the Town of Nasewaupsee.

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
Bob Ryan:	Aye
John Young:	Aye
Monica Nelson:	Naye
Aric Weber:	Aye

Signed _____

Signed _____

Chairperson

Recording Clerk

Dated: May 26, 2020

Filed: May 27, 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: Maxine Louise Keller Kottage Trust

PROPERTY ADDRESSES / P.I.N.s: 7776 Haines Road / 020-02-32282531H

HEARING DATE: May 12, 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: Narrow parcel and setbacks from navigable stream and holding tank limit area available for construction.

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

OR

- B. Is conformity with the regulation(s) unnecessarily burdensome?**

YES X NO _____

EXPLAIN: The denial of a variance would be unnecessarily burdensome in that the owners would be required to build the garage very close to the residence in order to comply with all required setbacks. May Creek is actually located across the town road from the proposed building site. In that the road creates a natural barrier between the creek and proposed building site, additional runoff into the creek is unlikely.

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 proposed garage location will not be out of character with other garages in the immediate area. The garage will replace a shed of similar dimensions. The proposal will protect property values and the property tax base. The project promotes planned and orderly land use development.

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 May 13, 2020

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.