

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, July 14, 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 (C101, First Floor) and Peninsula Room (C121, First Floor) at 421 Nebraska Street, Sturgeon Bay, Wisconsin. Applicants and members of the public may monitor and participate remotely only.

To join the hearing and meeting via computer, click on the following link, <https://doorcounty.webex.com/doorcounty/onstage/g.php?MTID=ee09b1255f1a62c64e2bd7259ec408b0e>, enter your name and e-mail address when prompted (the password is entered for you), and then click “join.”

Alternatively, using the free smartphone app “Cisco WebEx Meetings,” click “join” a meeting and then enter the meeting number/access code (146 969 3022) and password (July14boa).

You may also simply call (408) 418-9388 and enter the meeting number/access code.

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

AMENDED AGENDA*

- 1.0 Call to order and declaration of quorum.
- 2.0 Discuss and arrive at decisions on Petitions for Grant of Variance.
 - 2.1 Mary Edwards & Thomas Meier; encroach into setback from ordinary high water mark; Gardner.
 - 2.2 William S. Nuhs, Jr.; reduction in floodplain fill requirement, encroach into setback from ordinary high water mark; Gardner.
- 3.0 Old Business.
 - 3.1 Read and act on Minutes of July 7, 2020 meeting.
 - * 3.2 Review, discuss, finalize and issue decision – Camp Zion, Inc. Petition for Grant of Variance (July 7, 2020 Hearing).
- 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

07/10/20

* Application materials may be viewed on-line beginning approximately four business days before the hearing at: <https://www.co.door.wi.gov/AgendaCenter>

Notice in compliance with the Americans with Disabilities Act: 1) Any person needing assistance to participate in this meeting should contact the Office of the County Clerk at (920) 746-2200. Notification 48 hours prior to a meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting. 2) Door County is committed to making its electronic and information technology (e.g., website and contents) accessible for all persons. If you encounter difficulty accessing the posted materials for this meeting, located on-line at <https://www.co.door.wi.gov/AgendaCenter> under the committee name, please call (920) 746-2323, or send a FAX to (920) 746-2387, or send an e-mail Lriemer@co.door.wi.us so that we may determine how to best assist you.

These minutes have not been reviewed by the oversight committee
and are subject to approval or revision at the next regular committee meeting.

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

July 7, 2020

1.0 Call to order and declaration of quorum.

The meeting was called to order by Chairperson Frey at 2:00 p.m. on Tuesday, July 7, 2020 in the County Board Room (C101) of the Door County Government Center, Sturgeon Bay, Wisconsin.

Board of Adjustment Members

Present:

Fred Frey, Chairperson
Chris Anderson, Alternate
Monica Nelson
Arps Horvath, Alternate
Bob Ryan

Staff

Richard D. Brauer, Zoning Administrator
Michelle Schuster, Zoning Administrator
Mariah Goode, Land Use Services Dept. Director
Grant Thomas, Door County Corporation Counsel

Excused:

Aric Weber

Board member Bob Ryan participated remotely.

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

2.1 Camp Zion, Inc.; encroach into setback from private road; Liberty Grove.

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

Aye: Frey, Ryan, Nelson, Horvath, Anderson.

The reasons for the decision are set forth on the attached Board of Adjustment decision-making worksheet and reflected in the record of the proceeding, and will be expressed in the coming written decision.

3.0 Old Business.

3.1 Read and act on Minutes of June 23, 2020, meeting.

Motion by Ryan, seconded by Anderson, 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 June 23, 2020, meeting: Stephen B. Nordstrom, Graycliffe, LLC, Carl M. Curry, and Cynthia M. Curry appeal.

Motion by Ryan, seconded by Nelson, 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 July 14, 2020. Two variance cases have been scheduled for public hearing that day. Board member Arps Horvath informed staff that he would not be available for that meeting.

5.0 Vouchers.

All of the board members present submitted vouchers. (Note: Bob Ryan said he would deliver his voucher and BOA worksheets to the Government Center.)

6.0 Adjournment.

Motion by Ryan, seconded by Anderson, to adjourn. Motion carried unanimously (5-0). Chairperson Frey declared the meeting adjourned at 7:08 p.m.

Respectfully submitted,

Richard D. Brauer
Zoning Administrator

RDB
07/13/20

DOOR COUNTY BOARD OF ADJUSTMENT

Decision – Area Variance

Hearing Date: July 7, 2020 Decision Date: July 14, 2020

Applicants: Camp Zion, Inc.

Property: PIN 018-02-02322821A1 & 018-04-35332814A2 / East of 12701 Door Bluff Road

Description of Variance Requested:

Camp Zion, Inc. petitions for a variance from Section 3.06, Door County Comprehensive Zoning Ordinance, which requires a building screened from the road with vegetation and a total volume between 120,001 and 180,000 cubic ft. be set back at least 102.5 ft. from the described edge of a private road easement, or travelled edge of the road where the easement is not described. The petitioners propose to construct a building with 179,151.23 cubic ft. of volume to be used for dining, meeting, recreation, education, and other activities customary for an Institutional Recreation Camp. The building would be as close as 68 ft. to the private road edge, a covered deck as close as 62.5 ft., and a walking bridge as close as 32 ft. This property is located east of 12701 Door Bluff Road and is known as Tax Parcel No. 018-02-02322821A1 in Section 2, Town 32 North, Range 28 East and Tax Parcel No. 018-04-35332814A2 in Section 35, Town 33 North, Range 28 East. Both are in the Heartland-3.5 (HL3.5) 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. Variance
 - 1. The requested variance does not meet the criteria set forth in Section 59.694(7), Wisconsin Statutes.
- B. ADA
 - 1. The variance requested is not necessary to afford accessibility.
 - 2. There are, and Door County is open to use of, other approaches to provide reasonable accommodations. This includes an administrative permit, administrative waiver, or in some other way.
- C. RLUIPA
 - 1. The text of the zoning regulation at issue (i.e., Section 3.06, DCCZO) is facially neutral.
 - 2. The comparators offered by the Petitioner are not valid, as they are not comparable in terms of the nature of the use, the types of structures, the size of the parcels, and project impacts.
 - 3. Petitioner failed to establish that a substantial burden exists on religious exercise.
 - 4. The alleged burden is merely a matter of convenience or preference for the Petitioner.
 - 5. There are feasible alternatives, to the variance requested, for the desired structure and use.

The Board of Adjustment hereby denies the petition for grant of variance.

Signed _____

Signed _____

Chairperson

Recording Clerk

Dated: July 14, 2020

Filed: July 15, 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: Camp Zion, Inc.

PROPERTY ADDRESSES / P.I.N.s: East of 12701 Door Bluff Road / 018-02-02322821A1
and 018-04-35332814A2

HEARING DATE: July 7, 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 this property has an area of steep slope, there are other areas within the compliant building envelope on this parcel to build a structure that would not require a variance for setback relief. ADA compliance could be achieved by other means, such as special transport vehicles.

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 proposed building could be relocated on the property and constructed in compliance with all setback requirements. The request is based on personal preference. ADA compliance could be achieved by other means, such as special transport vehicles. Denial of the variance does not prevent a building for this purpose from being constructed nor the property from being used for the permitted purpose. Definitions of preference and necessity are being confused to support an argument that is not valid – convenience. Transport of ADA campers could be used.

OR

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

YES _____ NO X

EXPLAIN: The petitioners have worked diligently to place the proposed building in the most desired and feasible location for Camp Zion. They have presented a sound plan but unfortunately the hardship has been self-created and does not meet the standards for granting a variance. Conforming with the regulation is burdensome for the proposed plan, but there are other options to consider while working to maintain equal access to meet ADA compliance.

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

EXPLAIN: Must consider cumulative impacts. May be harmful if construction and the increased usage of the area result in safety and environmental concerns. A variance goes with the property if ownership changes. Road setbacks are designed to maintain positive public viewing of natural habitat. The size of the proposed building is out of character with other buildings in this area. The ordinance is designed to protect the public interest and granting the variance defeats that purpose. Public interest is served by the camp's mission and the experience, but the magnitude and the effects of this size building are not in the best interests of the public within the neighboring residential area.

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

Dated this July 14, 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.