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, September 22, 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 meeting via computer, click on the following link, https://doorcounty.webex.com/doorcounty/onstage/g.php?MTID=e28361216667d79a1cb8ef2babbee80ae, 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 (146 143 8700) and password (Sept22boa2020).

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 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.

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  Town of Gibraltar; encroach into setback from ordinary high water mark, shoreline access walkway that would exceed 60 inches in width; Gibraltar.

3.0  Old Business.
    3.1  Read and act on minutes of September 8, 2020 meeting.
    3.2  Final disposition of the following case considered by the Board of Adjustment at the September 8, 2020, meeting: Lori Litersky.

4.0  Other Matters.
    4.1  Discuss future meeting dates.

5.0  Vouchers.

6.0  Adjournment.

** Deviation from the order shown may occur. **
* 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.
PUBLIC HEARINGS BEFORE
THE DOOR COUNTY BOARD OF ADJUSTMENT

Door County, Wisconsin

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, September 22, 2020 will be virtual only. The board will be assisted in conducting the hearings 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 hearings will also be conducted by teleconference or video conference only. Applicants and members of the public may monitor and participate in the hearings and meeting remotely only.

To join the hearings and meeting via computer, click on the following link,: https://doorcounty.webex.com/doorcounty/onstage/g.php?MTID=e2836121667d79a1cb8ef2babbee80ae, 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 (146 143 8700) and password (Sept22boa2020).

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

The hearings will begin at 2:00 p.m., to give consideration to the applications listed below for a variance and an appeal of a Resource Planning Committee decision, as specified in the county shoreland and comprehensive zoning ordinances:

TOWN OF GIBRALTAR

The Town of Gibraltar petitions for a variance from sections IV.B.2.b. and IV.B.2.d.4) of the Door County Shoreland Zoning Ordinance which require structures be setback at least 75 feet from the ordinary high water mark of Green Bay and limit walkways that are necessary to provide pedestrian access to the shoreline to 60 inches in width. The petitioner proposes to construct a shoreline access walkway that would be up to 96 inches wide. Approximately 56 feet of the walkway would parallel the shoreline and have a 0 foot setback from the ordinary high water mark. This property is located at 4108 and 4112 Main Street in Section 29, Town 31 North, Range 27 East, and in a Village Commercial (VC) zoning district.

All interested parties are urged to view the hearings and/or give oral testimony remotely via the free software application WebEx. In-person attendance and testimony will not be permitted. Anyone wishing to offer oral testimony needs 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, 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 submitted for town-level proceedings regarding these matters does NOT get forwarded to the Board of Adjustment.
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 Board of Adjustment shall follow the public hearings.

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

The list of names to whom this notice was sent via regular mail is available upon request filed with the 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: September 5, 2020 & September 12, 2020
08/31/20
RB/Ir
Door County Resource Planning Committee and Board of Adjustment
Guidelines for Hearings Conducted “ Virtually”

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 observe or participate remotely via the free software application Cisco WebEx. Information on how to participate via WebEx 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 12:00 p.m. (noon) the day prior to the hearing.

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

- **Anyone wishing to offer live 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.
  - Cell phone number at which you may be reached the day of the hearing.
  - Case/project about which you wish to provide testimony.
  - Whether you wish to speak in favor or in opposition.

- All live testimony will use the free software application Cisco WebEx. Information about how to access the meeting may be found on the hearing notice or business meeting agenda.

- You will not have the ability to provide handouts to committee members. 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 12:00 p.m. (noon) 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 BOARD OF ADJUSTMENT
DECISION-MAKING WORKSHEET

APPLICANT NAME
PROPERTY ADDRESS / P.I.N.
HEARING DATE

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

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

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

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

EXPLAIN:
_____________________________________________________
_____________________________________________________
_____________________________________________________
_____________________________________________________

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: _____________________________________________

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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: ________________________________

______________________________

______________________________

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.

For variances granted: Unless the Board establishes an alternate expiration date, the privileges granted by this decision shall become void after one (1) year, during which time the action authorized by the variance must be commenced and/or completed, as specified by the Board. This variance shall become void in (choose one):

____ one year (the privileges granted by this decision shall become void after one year unless the zoning permit for the authorized project has been obtained with such time.)

____ other (specify the expiration year and actions that must occur, if any)

Dated this ____________________
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."

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.
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 its 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) (Ne)

Full Name: Town of Gibraltar
Mailing Address: 4097 Hwy 42
City: Fish Creek
Telephone No.: 920-866-1714
Email: clark@townofgibraltar.com
State: WI
Zip: 54212

hereby petition(s) the Door County Board of Adjustment for a variance from Section (c) Door Co. Shoreland Zoning Ordinance IV.B.2

of the Door County Zoning Ordinance which requires sidewalks and stairways to provide pedestrian access maximum of 60 inches wide. As well as no structure within 75' of OHWM

(I) (Ne) propose to construct a retaining wall above the OHWM to protect park from further erosion and provide a small beach area. All accessible by brick walkway.

LOCATION:
The description of the property involved in this petition is located at:

Fire # 410844110 Road: Main St
Township: Gibraltar
Govt Lot 4 or 4-W Section 22 Town 31 North, Range 27 East
Tax Parcel No.: 014 - 15 - 00308 00308 and 015
Zoning District: VC
Lot Size:
Existing use of structure or land in question: Public beach and bathhouse

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) Unusual 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:

High water levels eliminate historic beach and have impacted historic wall near OHWM. Requires protection to be added through DNR permit. New wall extended to provide access and protection of park area. Sidewalk and steps to provide access for large quantity of visitors to the park and beach.

10' wide walk for emergency vehicle access to beach.
PETITION FOR GRANT OF VARIANCE – PAGE 2

(b) No Harm to Public Interests
A variance may not be granted which results in harm to public interests. In applying this test, the Board of Adjustment must consider the impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the entire community and the general public. These interests are listed as objectives in the purpose statement of an ordinance and may include:

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

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

The proposed measures protect public access and future preservation of public park. Wall and riprap will prevent erosion and increase water quality, add scenic beauty, prevent property damages, and be in the public’s best interest based on superior beach access.

(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:

High water levels have eliminated usable beach creating a hardship for continued use of the water front. Adequate brick walkways provide ADA access to the waterfront which is currently unavailable.

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: 7-1-2020

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

The walkway from the existing concrete at the pavilion down to the dock is 8’ wide. The curved walkway along the beach is 6’ wide, so stating “up to 96” wide” would cover it.

Thanks.

Steve

Steven J. Parent, P.E.
Baudhuin Surveying & Engineering
312 North Fifth Avenue
PO Box 105
Sturgeon Bay, WI 54235

Phone (920) 743-8211
Cell (920) 421-1413
Map
Printed 07/16/2020 courtesy of Door County Land Information Office

Door County, Wisconsin
... for all seasons!

13
Town of Gibraltar - Fish Creek Beach
CONSTRUCTION PLANS

JOB NUMBER
23258

LOCATED IN: GOVERNMENT LOT N OF SECTION 30,
TOWNSHIP 31 NORTH, RANGE 27 EAST,
VILLAGE OF FISH CREEK, DOOR COUNTY, WISCONSIN

PROPERTY ADDRESS:
4008 / 4112 MAIN ST.
FISH CREEK, WI 54212

PARCEL ID:
014-15-0300, 0301, AND 0105

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1. REMOVE EXISTING CEDAR TREES AND STUMPS.
2. EXISTING TREE TO BE SAVED, USE TREE SPADE TO REMOVE TREE AND REPLANT IN SIMILAR LOCATION AFTER SITE GRADING IS COMPLETED.
3. EXISTING TREE TO BE SAVED AND KEPT IN PLACE, SURROUND TREE WITH LANDSCAPE RETAINING WALL AND COVER WITH TREE GRATE, FULL BEHIND RETAINING WALL PER PLN. SEE CROSS SECTION A-A, SHEET C202.
4. REMOVE EXISTING STONE RETAINING WALL, 10' LF TO BE REPLACED.
5. TEMPORARY STONE TRACKOUT PAD EROSION CONTROL, AS NEEDED. SEE DETAIL A, SHEET C200.
6. TURBIDITY BARRIER EROSION CONTROL, 193 LF. SEE DETAIL B, SHEET C200.
7. EXISTING CULVERT EXCAVATING INTO BAY TO REMAIN. MER TO BE PLACED INSIDE EXISTING MANHOLE AT CENTER CULVERT WITH TOP OF MER AT ELEV. SALES. REMAINING OPENING OF EXISTING CULVERT TO BE USED AS EMERGENCY OVERFLOW. SEE DETAIL D00, SHEET C204.
8. REMOVE 3 CEDAR TREES FOR NEW CULVERT AND CONNECTION TO EXISTING MANHOLE.
NOTES
1. IRRIGATION LAYOUT, LOCATION, AND LABELS PROVIDED BY CLIENT AND IS NOT GUARANTEED TO BE ACCURATE OR CORRECT.
2. IRRIGATION HEADS AND LINES TO BE REMOVED OR MODIFIED AS INDICATED ON PLAN VIEW, DUE TO FILLING AND GRAADING OPERATIONS.
3. CONTRACTOR HAS OPTION TO RE-USE / EXTEND HEADS OR REPLACE.
4. RAISE CONTROL VALVE / MANIFOLD BOXES, AS NEEDED.

IRRIGATION LEGEND
- RAIN BIRD 2004 ROTARY NOZZLE & ARC VARY
- RAIN BIRD 1812 SPRAY HEAD MPR OR VAN NOZZLE & ARC VARY
- RAIN BIRD 1804 SPRAY HEAD MPR OR VAN NOZZLE & ARC VARY
- CONTROL VALVE
- 3-JIC QUICK COUPLER VALVE
- ISOLATION VALVE
- RAIN SENSOR
- CONTROLLER
- AVB - MASTER VALVE
- WIRE JUNCTION BOX
1. Existing tree to be saved, use tree space to remove tree and replant in similar location after site grading is completed.
2. Existing tree to be saved and kept in place. Surround tree with landscape retaining wall and cover with tree grate. Fill behind retaining wall per plan. See cross section A-A, sheet C02.
3. Sod to be prepared and placed per supplier instructions. Approx 20,000 SF.
4. 12" wide grasses/planting strip immediately behind wall and between wall and walkway. See detail A, sheet C01.
August 27, 2020

Beth Hagen
PO Box 850
Fish Creek, WI 54212

Dear Ms. Hagen:

This letter contains important information regarding your DNR permit application to place an outfall structure, construct a pier, construct a seawall, and construct a connected enlargement on the bed of Lake Michigan in Door County. Your application has reached its date of closure and is considered complete. Wisconsin law (chapters 30 and 281, Wisconsin Statutes) requires that the public be allowed an opportunity to comment on projects like yours. The next step in the individual permit review process is a Notice of Pending Application and public comment period. You have asked the Department to publish the notice on your behalf.

The enclosed document is a "Notice of Pending Application" for your project. The Department will arrange for newspaper publication of the notice and will publish the notice on our Internet website. The 30-day period to submit written public comment and the 20-day period to request a public hearing in writing will begin on the date on which the Department first publishes the notice on our Internet website. If a public hearing is held, the period to submit written public comment will end 10 days after the date the hearing is completed.

State law requires that a copy of the enclosed notice be delivered by U.S. Mail as Certified Mail - Return Receipt Requested to interested members of the public. The Department will arrange for these mailings. For your information, the Department has determined the parties listed below will be notified. You may notify others at your discretion.

John and Marilyn Good Trust, 13645 Park Circle N., Elm Grove, WI 53122.
Robert Reinhard Jr., 1505 Berwick Drive, McKinney, TX 75070.

Please write or call me at (715) 416-3827 or email Sarah.Szabo@wisconsin.gov if you have any questions.

Sincerely,

Sarah Szabo
Water Management Specialist
Notice of Pending Application for Outfall, Pier, Seawall, and Connected Enlargement

Beth Hagen, PO Box 850, Fish Creek, WI 54212 has applied to the Department of Natural Resources for a permit to place an outfall structure, construct a pier, construct a seawall, and construct a connected enlargement on the bed of Lake Michigan.

The project is located in the SW1/4 of the SE1/4 of Section 29, Township 31 North, Range 27 East, Town of Gibraltar, Door County.

The project consists of extending storm sewer outfall 95 feet from shoreline, constructing a pier with viewing platform, constructing a seawall, and excavating a connected enlargement to function as a small beach area at the Town of Gibraltar Beach.

The Department will review the proposal provided by the applicant and any information from public comments and a public informational hearing, if requested. The Department will determine whether the proposal complies with ss. 1.11 and 30.12(3m), Stats., and ch. NR 150, Wis. Adm. Code, and ensure that the required mitigation meets the standards in s. 281.36(3r), Stats. if the project impacts wetlands.

The Department has made a tentative determination that it will issue the permit or contract for the proposed activity.

If you would like to know more about this project or would like to see the application and plans, please visit the Department’s permit tracking website at https://permits.dnr.wi.gov/water/SitePages/Permit%20Search.aspx and search for WP-IP-NE-2020-15-X07-12T19-23-55.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

Any person may submit comments and/or request a public informational hearing by emailing Sarah.Szabo@wisconsin.gov or over the phone at 715-416-3827. If you are submitting general comments on the proposal, they must be emailed or verbalized within 30 days after the date this notice is published on the Department’s website. If you are requesting a public informational hearing, the request must be emailed or verbalized within 20 days after the date this notice is published on the Department’s website. A request for hearing must include the docket number or applicant name and specify the issues that the party desires to be addressed at the informational hearing.

If no hearing is requested, the Department may issue its decision without a hearing. If a public informational hearing is held, comments must be postmarked no later than 10 days following the date on which the hearing is completed.

The final decision may be appealed as indicated in the decision document.

Docket Number IP-NE-2020-15-02407

WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

Sarah Szabo
Water Management Specialist

08/27/2020
Date
DOOR COUNTY BOARD OF ADJUSTMENT  
Decision – Area Variance  

Hearing Date: September 8, 2020  
Decision Date: September 8, 2020  

Applicants: Lori Litersky  

Property: 3360 S. Willow Road / 0120-02-10272411 [ ]  

Description of variance requested:  

Lori Litersky petitions for a variance from section 4.3(1)(a) of the Door County Floodplain Zoning Ordinance which requires fill be placed at least 15 feet beyond the limits of a residence located in the floodplain. The petitioner proposes to lift and place the existing nonconforming residence on fill in the same exact footprint in order to bring the structure into compliance with the ordinance. The applicant is requesting relief from the extent of fill since the residence is located as close as 7.72 feet from the south lot line. The fill will extend 15 feet around the remainder of the residence. The property is located at 3360 S. Willow Road in Section 10, Town 27 North, Range 24 East, in the Town of Gardner.

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:

Arps Horvath: Aye  
Aric Weber: Aye  
Monica Nelson: Aye  
Chris Anderson: Aye  
Bob Ryan: Aye  

Signed ___________________________________________  
Chairperson  

Signed ___________________________________________  
Recording Clerk  

Dated: September 22, 2020  
Filed: September 23, 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: Lori Littersky

PROPERTY ADDRESSES / P.I.N.s: 3360 S. Willow Road / 012-02-10272411

HEARING DATE: September 8, 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

   **EXPLAIN:** Small grandfathered lot prevents owner from relocating residence in a complying location. High lake/bay levels have flooded 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 _X___ NO _________
   
   EXPLAIN: Small grandfathered lot, required setbacks, and locations of existing driveway and septic system prevent the owner from complying with all ordinance standards. The property will not be useable unless a variance is granted and the owners are allowed to raise the residence to prevent further flooding.
   
   OR

B. Is conformity with the regulation(s) unnecessarily burdensome?
   
   YES _X___ NO _________
   
   EXPLAIN: See reasons for # 1. The denial of a variance would be unnecessarily burdensome in that it would prevent the owner from floodproofing the structure and as a result the residence would no longer be habitable.

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: It has been shown that the proposed fill on this property will not cause additional flooding on the neighbor's properties. In that the neighbors on both sides have also dealt with flooding issues, the proposed project will not be out of character with the surrounding area. The granting of this variance will allow the neighbor to fill his property without the need of a seawall and an additional variance. The granting of a variance will help to protect property values and the property tax base. The proposal will help to protect the beauty of the landscape.

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.

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 *September 9, 2020*

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**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 shore and 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.