

Notice of Public Meeting Tuesday, December 28, 2021 3:30 p.m.	DOOR COUNTY BOARD OF ADJUSTMENT	Door County Government Center Peninsula Room (C121, 1st floor) 421 Nebraska Street, Sturgeon Bay, WI
USE THE 4TH STREET ENTRANCE, ACROSS FROM THE LIBRARY.		

AGENDA

- 1.0 Call to order and declaration of quorum.
- 2.0 Read and act on minutes of December 14, 2021 meeting.
- 3.0 Final disposition of the following case considered by the Board of Adjustment at December 14, 2021 meeting.
 - 3.1 Clark Lake, LLC.
- 4.0 Future meeting schedule:
 - February 8, 2022: 1 - 2 cases; start time 4:30 p.m.
- 5.0 Vouchers.
- 6.0 Adjournment.

Deviation from order shown may occur.

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

SKV
12/21/21

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

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

Link:
<https://us02web.zoom.us/j/84773945551?pwd=OGtDOFJyTXNGQi85c3U0RWk5eGhvUT09>
Zoom Webinar ID: 847 7394 5551
Passcode: 011500

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

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

December 14, 2021

1.0 Call to order and declaration of quorum.

The meeting was called to order by Chair Frey at 4:31 p.m. on Tuesday, December 14, 2021, in the Peninsula Room (C-121) of the Door County Government Center, Sturgeon Bay, Wisconsin.

Present:	<u>BOA Members</u>	<u>Staff</u>	<u>Others</u>
	Fred Frey	Sue Vanden Langenberg	Wayne Semmerling
	Aric Weber	Kristin Rankin	Terry Junion
	Monica Nelson		
	Arps Horvath		
	Chris Anderson		

Excused: Bob Ryan

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

2.1 Clark Lake, LLC; town road setback; Jacksonport.

Motion by Weber, seconded by Anderson, to grant the variance petition as requested. Motion carried unanimously (5 - 0).

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

3.0 Read and act on minutes of November 22, 2021 meeting.

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

4.0 Future meeting schedule:

- January 11: 1 case; start time 4:30 p.m.
- January 25: 1 case ?; start time 4:30 p.m.

Decision documents for tonight's case will be signed on December 28th at 3:30 p.m.; Frey, Nelson, and Horvath will attend.

January 11, 2022 meeting at 4:30 p.m. (appeal: RPC decision); Frey, Weber, Nelson, Horvath, and Anderson (if needed) will attend.

January 25, 2022 meeting at 4:30 p.m. (1-2 variances); Nelson and Horvath are available.

Meeting schedule as discussed noted.

5.0 Vouchers.

All BOA members submitted vouchers reflecting a one-hour meeting.

6.0 Adjournment.

Motion by Horvath, seconded by Nelson, to adjourn. Motion carried unanimously (5 – 0). Chair Frey declared the meeting adjourned at 5:15 p.m.

Respectfully submitted,

Sue Vanden Langenberg
Zoning Administrator

Kristin Rankin
Zoning Administrator

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

APPLICANTS NAMES: Clark Lake LLC

PROPERTY ADDRESSES / PIN: 5531 Clark Lake Dr. / 016-00-34292742Q

HEARING DATE: December 14, 2021

DECISION DATE: December 14, 2021

DESCRIPTION OF VARIANCE REQUESTED:

Clark Lake LLC petitions for a variance from Section 3.05(3) of the Comprehensive Zoning Ordinance which requires structures be at least 65' from the center of a town road right-of-way. The petitioner proposes to construct a 32' x 35' detached garage as close as 48' to the center of the town road right-of-way. This property is located at 5531 Clark Lake Dr.

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

Signed _____
Chairperson

Signed _____
Recording Clerk

Dated: December 28, 2021

Filed: December 29, 2021

Appeal: *This decision may be appealed by a person aggrieved by this decision by filing an action in certiorari in the circuit court for this county within 30 days after the date of filing of this decision. The County of Door assumes no liability for and makes no warranty as to reliance on this decision if construction is commenced prior to expiration of this 30 day period.*

The privileges granted by this decision shall become void after one year unless the zoning permits for the authorized project have been obtained within such time.

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

APPLICANTS NAMES: Clark Lake LLC

PROPERTY ADDRESSES / PIN: 5531 Clark Lake Dr. / 016-00-34292742Q

HEARING DATE: December 14, 2021

DESCRIPTION OF VARIANCE REQUESTED:

Clark Lake LLC petitions for a variance from Section 3.05(3) of the Comprehensive Zoning Ordinance which requires structures be at least 65' from the center of a town road right-of-way. The petitioner proposes to construct a 32' x 35' detached garage as close as 48' to the center of the town road right-of-way. This property is located at 5531 Clark Lake Dr.

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: Due to the location of the existing residence, driveway access to the residence, and septic tank, there is no other location for the detached garage. The existing, nonconforming detached garage is currently located only inches from the side lot line and 48 feet from the center of the road right-of-way. The proposed garage will be brought into compliance with the side yard setback and will not encroach any closer to the road than the existing structure.

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 _____
3. EXPLAIN: The denial of a variance would require the detached garage to be placed in an undeveloped portion of the lot and the holding tank would most likely need to be relocated; therefore, conformity with the regulations would be unnecessarily burdensome. The granting of the variance will allow the owner to rebuild a new detached garage no closer to the road right-of-way than the existing detached garage and the new structure will be located in compliance with the side yard setback.

4. 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 detached garage will replace a dilapidated garage within the same footprint as the existing nonconforming garage, but will be brought into compliance with the side yard setback. The property fronts on a dead-end, town road which terminates three lots to the south, so there is no concern about traffic safety. The town planning committee and town board support the granting of the variance. The aesthetics of the property will be improved.

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

The privileges granted by this decision shall become void after one year unless the property owner obtains the appropriate zoning permits within such time.

Dated this: December 15, 2021

Door County Zoning Ordinance Purpose Statements

"1.04 Purpose. The purpose of this Ordinance is to promote and protect public health, safety, aesthetics, and other aspects of the general welfare. Further purposes of this Ordinance are to:

- (1) Aid in implementing the county development plan.
- (2) Promote planned and orderly land use development.
- (3) Protect property values and the property tax base.
- (4) Fix reasonable dimensional requirements to which buildings, structures, and lots shall conform.
- (5) Prevent overcrowding of the land.
- (6) Advance uses of land in accordance with its character and suitability.
- (7) Provide property with access to adequate sunlight and clean air.
- (8) Aid in protection of groundwater and surface water.
- (9) Preserve wetlands.
- (10) Protect the beauty of landscapes.
- (11) Conserve flora and fauna habitats.
- (12) Preserve and enhance the county's rural characteristics.
- (13) Protect vegetative shore cover.
- (14) Promote safety and efficiency in the county's road transportation system.
- (15) Define the duties and powers of administrative bodies in administering this Ordinance.
- (16) Prescribe penalties for violation of this Ordinance."

Wisconsin Statutes Purpose Statement

281.31. Navigable waters protection law

"(1) To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans and authorize municipal shoreland zoning regulations for the efficient use, conservation, development and protection of this state's water resources. The regulations shall relate to lands under, abutting or lying close to navigable waters. The purposes of the regulations shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty." *(Emphasis added.)*

Examples as to how to use the above in conjunction with analysis of a variance request

When considering a variance request to relax the required ordinary high water mark setback, county zoning ordinance purposes (8), (10), (11), and (13) are likely relevant to consider. Purposes (2), (3), (4), and (5) may also be relevant. Depending upon the nature of the variance request, any of the components of the statutory purposes behind shoreland zoning (above) may be relevant to consider.

When considering a variance request to relax a required yard (setback), county zoning ordinance purposes (2), (3), (4), and (5) are likely relevant to consider.