

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 Thursday, September 17, 2020 beginning at 4:00 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). 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=e231aebd3cb8dd0ac703ffb79a4da845e>, 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 (146 206 5745) and password (Sept17boa2020).

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 Read and act on minutes of September 8, 2020 meeting.
- 3.0 Review, discuss, finalize, and issue decision: Attorney James R. E. Smith on behalf of Ted Gardner and Juliann Gardner; appeal Door County Resource Planning Committee decision whereby the committee conditionally approved a nonmetallic mine; Washington.
- 4.0 Future meeting dates.
- 5.0 Vouchers.
- 6.0 Adjournment.

** Deviation from the order shown may occur. **

Aric Weber, Vice-Chair
Board of Adjustment

09/14/20

* 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**

September 8, 2020

1.0 Call to order and declaration of quorum.

The meeting was called to order by Vice-Chair Weber at 2:03 p.m. on Tuesday, September 8, 2020 in the County Board Room (C101) of the Door County Government Center, Sturgeon Bay, Wisconsin.

Board of Adjustment Members

Aric Weber, Vice-Chair
Monica Nelson
Bob Ryan
Arps Horvath, First Alternate
Chris Anderson, Second Alternate

Staff Present:

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

Excused

Fred Frey, Chair
Cheryl Mick, First Alternate

2.0 Discuss and arrive at decisions on a Petition for Grant of Variance and an Appeal.

2.1 Lori Litersky; reduction in floodplain fill requirement; Gardner.

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

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

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.

2.2 Attorney James R. E. Smith on behalf of Ted Gardner and Juliann Gardner; appeal Door County Resource Planning Committee decision whereby the committee conditionally approved a nonmetallic mine; Washington.

Motion by Nelson, seconded by Horvath, to grant the conditional use permit (thereby denying the appeal), subject to Board of Adjustment final review and approval of the decision letter and permit conditions at a special meeting that will be held at 4:00 p.m. on Thursday, September 17, 2020, in the County Board Room. Motion carried unanimously (5-0).

3.0 Old Business.

3.1 Read and act on Minutes of July 28, 2020 meeting.

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

4.0 Other Matters.

4.1 Announce next meeting.

Brauer announced that the next regularly scheduled meeting would be held on September 22, 2020. One variance case has been scheduled for public hearing that evening. Chris Anderson informed staff that she would be unable to attend that meeting.

The five board members in attendance for this meeting also agreed to meet on Thursday, September 17, 2020, at 4:00 p.m. in order to review and approve the decision letter and conditions that will be drafted for the appeal heard this evening.

5.0 Vouchers.

All of the board members present submitted vouchers.

6.0 Adjournment.

Motion by Anderson, seconded by Ryan, to adjourn. Motion carried unanimously (5-0). Vice-Chair Weber declared the meeting adjourned at 7:26 p.m.

Respectfully submitted,

Richard D. Brauer

RDB/lr

CONDITIONAL USE PERMIT WORKSHEET

Jordan/Hagen
Applicant

Non-Metallic Mine
Project

The Door County Resource Planning Committee (RPC) decision to approve, approve with conditions, or deny a Conditional Use Permit (CUP) must be supported by substantial evidence. A CUP applicant has the burden of proof. S/he must demonstrate, by substantial evidence, that the application and all requirements and conditions established in the ordinance and by the RPC relating to the conditional use are or shall be satisfied. If an applicant meets their burden of proof, then the RPC must grant the CUP.

If an applicant fails to meet their burden of proof, the CUP will be denied. The CUP may also be denied if substantial evidence exists to support the opposite conclusion, i.e., that the conditions and requirements the applicant must meet to obtain the conditional use permit are not or will not be satisfied.

Substantial evidence: Facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

Standard	Has the applicant met their burden of proof? (Yes / No / N/A)	Has convincing opposing substantial evidence been provided? (Yes / No / N/A)	Are there conditions which should or can be attached, whether to: a) insure ordinance compliance, b) address the lack of substantial evidence, and/or c) address convincing and substantial opposing evidence?
1) Whether the proposed project will adversely affect property values in the area.	No	No; evidence presented was not convincing	No substantial evidence was offered that demonstrates the proposed project would adversely affect property values in the area.
2) Whether the proposed use is similar to other uses in the area.	Yes	No; evidence presented was not convincing	Substantial evidence presented that the proposed use is similar with other uses in the area.
3) Whether the proposed project is consistent with the Door County Comprehensive and Farmland Preservation Plan or any officially adopted town plan.	Yes	No	
4) Provision of an approved sanitary waste disposal system.	N/A	N/A	
5) Provision for a potable water supply.	N/A	N/A	
6) Provisions for solid waste disposal.	N/A	N/A	
7) Whether the proposed use creates noise, odor, or dust.	Yes	Yes	Condition(s) imposed to address (see decision letter)
8) Provision of safe vehicular and pedestrian access.	Yes (vehicular) N/A (pedestrian)	No; evidence presented was not convincing	

9) Whether the proposed project adversely impacts neighborhood traffic flow and congestion.	Yes	No; evidence presented was not convincing	Not necessary; traffic impacts will be negligible and opposing evidence was not convincing
10) Adequacy of emergency services and their ability to service the site.	Yes	No	
11) Provision for proper surface water drainage.	Yes	No	Condition(s) imposed to ensure compliance
12) Whether proposed buildings contribute to visual harmony with existing buildings in the neighborhood, particularly as related to scale and design.	N/A	N/A	
13) Whether the proposed project creates excessive exterior lighting glare or spillover onto neighboring properties.	N/A	N/A	Condition(s) imposed to ensure compliance
14) Whether the proposed project leads to a major change in the natural character of the area through the removal of natural vegetation or alteration of the topography.	Yes	Yes	Condition(s) imposed to address (e.g., compliance with approved nonmetallic mining reclamation plan)
15) Whether, and in what amount and form, financial assurance is necessary to meet the objectives of this ordinance.	Yes	Yes	Condition(s) imposed to address
16) Whether, and to what extent, site-specific conditions should be imposed to mitigate potentially problematic impacts of the use.	Yes	Yes	<i>For example: Access restrictions? Parking? Hours of operation? Hours open to public? Screening? Increased setbacks? Restrictions on signs?</i> Condition(s) imposed to address
17) The impact of the proposed project on public health, public safety, or the general welfare of the County.	Yes	No; evidence presented was not convincing	<i>For example: Compliance with local, state, and federal codes, laws, orders, ordinances, and rules?</i> Condition(s) imposed to address
Other topics? (The RPC may consider topics in addition to the above.)			Condition(s) imposed to address

The Resource Planning Committee shall establish a completion date for the proposed project: See conditions

The Resource Planning Committee may impose conditions regarding the permit's duration, transfer, or renewal.
See conditions

September 18, 2020

Thomas Jordan
1481 Main Road
Washington Island, WI 54246

RE: Proposed Nonmetallic Mine (Parcel Number 028-04-32343033B)

Greetings:

At a public hearing on September 8, 2020, the Door County Board of Adjustment took testimony on an appeal of a Resource Planning Committee decision regarding your conditional use permit application related to the above property. Immediately subsequent to the public hearing, discussion ensued regarding the conditional use permit decision-making criteria, ultimately followed by a motion by Nelson, seconded by Horvath, to grant the conditional use permit (thereby denying the appeal), but to hold off until a subsequent meeting on September 17, 2020 to approve the final language for conditions to attach to the permit. That motion carried unanimously (5-0).

At the subsequent business meeting on September 17, 2020, a motion was made by _____, seconded by _____, that:

- A. Thomas Jordan proposes to establish a nonmetallic mine on 3.94 acres of a 10.17-acre parcel accessed from and located directly north of 1342 East Side Road, Town of Washington, Door County, Wisconsin, in Section 32, Town 34 North, Range 30 East and in a General Agricultural (GA) zoning district, under a conditional use permit.
- B. Following a public hearing, the Board of Adjustment (BOA) finds and concludes that:
 - 1. The applicant has demonstrated by substantial evidence that the application and all conditions and requirements relating to the proposed conditional use are or will be satisfied.
 - 2. Evidence exists to support the opposite conclusion, but it is not considered sufficient.
 - 3. A conditional use permit is hereby granted, subject to the following conditions and requirements:
 - a. The use must be established within 12 months of the issuance of the conditional use permit.
 - b. The project shall comply with all applicable local, state, and federal codes and ordinances, including obtaining all required approvals and permits prior to mining.
 - c. Owner/operator shall obtain and maintain a nonmetallic mining reclamation permit, comply with nonmetallic mining reclamation standards, nonmetallic mining reclamation plans, financial assurance requirements, and all other applicable requirements including those under Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, and Ch. 36, Door County Code.

- d. Owner/operator shall notify the Wisconsin Department of Natural Resources (WDNR) and United States Fish and Wildlife Service (USFWS), at the earliest opportunity, of the location, nature, and extent of the proposed activities authorized by this conditional use permit and inquire as to whether the proposed activity may affect endangered species or threatened species (e.g., Hines Emerald Dragonfly). Owner/operator will then work cooperatively with WDNR or USFWS, and comply with any requirements imposed by either agency, to ensure such activities do not adversely affect endangered species or threatened species. The purpose of this condition is to alleviate, to the maximum extent practicable under the circumstances, any potential adverse effect on the endangered species or the threatened species (e.g., minimizing any adverse modification of a habitat that is critical to the continued existence of the endangered species or the threatened species).
- e. Hours of operation for any mine-related activities shall be Monday through Friday only and shall begin no earlier than 8 a.m. and shall conclude no later than 5 p.m.
- f. Access to the subject property (parcel number 028-04-32343033B) for the purposes of this conditional use permit shall be via the property immediately to the south (1342 East Side Road, parcel number 028-04-32343033B1), as depicted on the submitted site plan, and shall be formalized via recorded easement.
- g. No materials shall be stored or processed – including but not limited to crushing, screening, storing, and stockpiling – on the property adjacent to the south (1342 East Side Road, parcel number 028-04-32343033B1), from which the mine activities will take access. Storage of mine-related equipment and vehicles shall be permitted within the existing buildings at 1342 East Side Road.
- h. Owner/operator shall obtain and maintain a WPDES storm water permit, if and as required by Ch. 283, Wis. Stats., Ch. NR 216, Wis. Adm. Code, or otherwise, and implement the appropriate performance standards under Ch. NR 151, Wis. Adm. Code, or as otherwise required. The goal of this condition is to minimize the discharge of pollutants carried by storm water runoff from the site.
- i. Owner/operator shall develop, submit to the Door County Land Use Services Department, and follow, a spill prevention, control, and countermeasures (SPCC) plan for the site. The purpose of this condition is to both prevent spills and to be prepared to take action in case of a spill at the site.
- j. Owner/operator shall annually provide documentation to verify depth of groundwater at the property and record seasonal changes in groundwater elevation.
- k. Any outdoor lighting erected in conjunction with this use shall utilize fixtures whose lens, hood, or combination thereof allow no direct beams to be seen

from off the property or cast skyward, and the lighting elements of which shall not be visible from adjacent properties.

- l. Blasting operations shall be conducted to prevent, to the maximum extent practicable under the circumstances, injury and unreasonable annoyance to persons and damage to public or private property outside the blasting site. Notification of blasting operations shall be made to the Door County Land Use Services Department, local fire department, local law enforcement agency, and property owners within 1700 feet of the blasting site. Such notification shall occur at least thirty (30) days prior to the date on which blasting is scheduled.
 - m. Owner/operator shall comply with applicable minimum standards or best management practices (e.g., the U.S. Environmental Protection Agency's) for controlling mining-related dust, noise, and odor.
 - n. Owner/operator shall utilize a practice or combination of practices intended to prevent, reduce, or mitigate trackout (i.e., the relocation of material such as dust and mud – from its intended location to offsite surfaces by vehicles), such as a stone tracking pad, manufactured trackout control devices, or tire washing consistent with Wisconsin DNR Trackout Control Practices Technical Standard 1057 July 2018 EGAD Number: 3800-2018-04, as may be updated.
 - o. The permittee has the continuing burden (of proof and persuasion) to demonstrate, to the reasonable satisfaction of the Door County Land Use Services Department, that the permitted activity is in compliance with this conditional use permit and conditions. To that end, owner/operator is obligated if and when requested to provide proof of compliance with the conditions attached to this permit, and owner/operator must allow entry or access onto the site by an employee or agent of Door County at any reasonable time for the purpose of ascertaining the state of compliance with this conditional use permit.
 - p. The Door County Board of Adjustment may review this conditional use permit periodically to assure compliance with all conditions.
 - q. This conditional use permit may not be transferred without the prior written approval of the Door County Board of Adjustment. Such approval will not unreasonably be withheld.
 - r. An affidavit shall be recorded with the Door County Register of Deeds to provide successors in interest notice of the conditional use permit and conditions and requirements.
4. The requirements and conditions described above are reasonable, objective, and measurable to the extent practicable, related to the purpose of the ordinance, and based on substantial evidence.
- C. The Board of Adjustment's decision is supported by substantial evidence.

That motion, approving the decision and conditions, carried _____(x-x).

As noted in condition "r", an affidavit is to be recorded along with copies of the conditional use permit, this decision letter, and the deed, in order to provide successors in interest notice of the conditional use permit and conditions and requirements. The affidavit will be mailed to you in a subsequent mailing.

The conditional use permit is enclosed and is subject to the conditions of this letter.

APPEAL: Be advised that any party aggrieved by the Board of Adjustment's decision to issue this zoning permit may appeal to the Door County Circuit Court. (Sec. 59.694(10), Wis. Stats.)

Please call me at (920) 746-2217 if you have any questions.

Sincerely,

Richard D. Brauer
Zoning Administrator

enc.: Conditional Use Permit
cc w/ enc.: Valerie Carpenter, Washington Town Clerk
Julian Hagen, 2071 W Harbor Road, Washington Island, WI 54246
Steve Parent, P.O. Box 105, Sturgeon Bay, WI 54235
Lora Jorgenson, P.O. Box 26, Forestville, WI 54213
Carol Johnson, 1427 East Side Road, Washington Island, WI 54246
Juliann Gardner, 9420 Shawnee Run, Cincinnati, OH 45243
Ted Gardner, 9420 Shawnee Run, Cincinnati, OH 45243
James R.E. Smith, 1236 Bluebird Street, Sturgeon Bay, WI 54235