

Notice of Public Meeting
Tuesday, June 22, 2021
3:00 p.m.

**DOOR COUNTY
BOARD OF ADJUSTMENT**

Door County Government Center¹
{Peninsula Room}
(C121, 1st floor)
421 Nebraska Street, Sturgeon Bay, WI

AGENDA

- 1.0 Call to order and declaration of quorum.
- 2.0 Old Business.
 - 2.1 Read and act on minutes of June 8, 2021 meeting.
 - 2.2 Final disposition of the following cases considered by the Board of Adjustment at the June 8, 2021 meeting: Attorney James R. Smith on behalf of The Gaetano M. and Amanda E. Auricchio Revocable Trust; J. Andrew and Mary J. Witteborg.
- 3.0 Other Matters.
 - 3.1 Discuss future meeting dates.
- 4.0 Vouchers.
- 5.0 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

RB/lr
06/09/21

In response to the public health emergency in connection with the COVID-19 pandemic, the meeting will be virtual only. Applicants and members of the public may monitor and participate remotely only.

Join the hearing and meeting by using the link below, or by using the Zoom smartphone app, or by calling (312) 626-6799.

Link:

<https://us02web.zoom.us/j/86530141381?pwd=Q1N0NVBBd2ZhYUNqb05BcHIQV3RLQT09>

Zoom Webinar ID: 865 3014 1381

Passcode: 937812

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.

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, 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**

June 8, 2021

1.0 Call to order and declaration of quorum.

The meeting was called to order by Vice Chairperson Weber at 3:00 p.m. on Tuesday, June 8, 2021, in the Door County Government Center Peninsula Room (C121), Sturgeon Bay, Wisconsin.

Board of Adjustment Members

Aric Weber, Vice-Chairperson
Arps Horvath
Monica Nelson
Cheryl Mick, First Alternate
Chris Anderson, Second Alternate

Staff Present:

Richard D. Brauer, Zoning Administrator
Mariah Goode, Land Use Services Department
Director
Sue Vandenlangenberg, Zoning Administrator
Ben Degner, Zoning Administrator

Excused

Bob Ryan
Fred Frey

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

2.1 Attorney James R. Smith, on behalf of The Gaetano M. and Amanda E. Auricchio Revocable Trust; ordinary high water mark setback for accessory structures; Gibraltar.

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

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

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

2.2 J. Andrew & Mary J. Witteborg; county highway setback; Jacksonport.

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

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

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

3.0 Old Business.

3.1 Read and act on Minutes of May 25, 2021, meeting.

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

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

4.0 Other Matters.

4.1 Discuss future meeting dates.

Brauer announced that no public hearings have been scheduled for the next meeting date on June 22, 2021. However, board members Weber, Horvath and Mick agreed to meet in order to sign the decision documents from today's hearings. The meeting will be held at 3:00 pm. The following meeting will be held on July 13, 2022. Staff informed the board members that there will be at least 4 cases scheduled for public hearing that day. Board members Nelson, Horvath, and Weber will be available for that date. Board member Mick will not be available and board member Anderson said she will be available only if absolutely necessary. That meeting will also be held at 3:00 pm.

5.0 Vouchers.

All of the board members present submitted vouchers.

6.0 Adjournment.

Motion by Mick, seconded by Nelson, to adjourn. Motion carried unanimously (5-0). Vice-Chairperson Weber declared the meeting adjourned at 4:48 p.m.

Respectfully submitted,

Richard D. Brauer
Zoning Administrator

RDB
06/09/21

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

Hearing Date: June 8, 2021

Decision Date: June 8, 2021

Applicants: Gaetano M. and Amanda E. Auricchio Revocable Trust

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

Description of variance requested:

Attorney James R. Smith, on behalf of The Gaetano M. and Amanda E. Auricchio Revocable Trust, petitions for a variance from Section IV.B.2.b. of the Shoreland Zoning Ordinance which requires accessory structures be set back at least 75' from the Green Bay ordinary high water mark (OHWM). The petitioners propose to construct a 16' x 35' in-ground pool 55' from the OHWM. This property is 8479 White Cliff Rd., in the Single Family Residential-20,000 (SF20) zoning district.

DECISION:

On the basis of the Decision Making Worksheet (attached hereto and incorporated herein by reference as if set forth in full) and the record in this matter the Board of Adjustment finds and determines that:

A. The requested variance does meet the criteria set forth in Section 59.694(7) Wisconsin Statutes.

The Board of Adjustment voted to grant the petition for grant of variance by the following vote:

| | |
|-----------------|-----|
| Chris Anderson: | Aye |
| Aric Weber: | Aye |
| Arps Horvath: | Aye |
| Cheryl Mick: | Aye |
| Monica Nelson: | Aye |

Signed _____

Signed _____

Chairperson

Recording Clerk

Dated: June 22, 2021

Filed: June 23, 2021

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.

DOOR COUNTY BOARD OF ADJUSTMENT
DECISION-MAKING WORKSHEET

APPLICANTS NAMES: Gaetano M. and Amanda E. Auricchio Revocable Trust

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

HEARING DATE: June 8, 2021

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: Severe slope, shape of lot, and setbacks from the centerline of the town road and the ordinary high water mark. Restrictive covenant prevents owners from building on the adjacent lot that they own to the north.

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: Previously mentioned unique physical property limitations severely limit the area available for construction on this lot.

OR

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

YES X NO

EXPLAIN: In that the denial of a variance would prohibit the owners from constructing a pool that is practical and safe, the conformity with the regulations would be unnecessarily burdensome.

3. PUBLIC INTEREST/SPIRIT AND INTENT OF THE ORDINANCE.

A variance may not be granted which results in harm to public interests, nor thwarts the spirit and intent of the ordinance. In applying this test, the board should review the purpose statements of the ordinance (and any statute or administrative rule upon which the ordinance is based) in order to identify public interests. (See page 4.) The short-term and long-term impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the community, and even the state, should be considered. Review should focus on the general public interest, rather than just the narrow interests or impacts on neighbors, patrons, or residents in the vicinity of the project.

Cumulative effects are a proper consideration. For instance, in the context of shoreland zoning, the general availability of variances permitting the horizontal expansion of structures so close to the water's edge may have the cumulative effect of enclosing our lakes within a wall of impermeable surfaces to the exclusion of vegetation and impairing the ecological functions of the shoreland buffer.

A variance is not a popularity contest. The mere fact of public support or opposition is not, in and of itself, determinative of whether or not a variance is contrary to the public interest.

The board may grant only the minimum variance needed, i.e., the minimum variance necessary to relieve the unnecessary hardship. For instance, if the request is for a variance of 30 feet from the minimum setback, and a finding is made that a 10-foot setback reduction would allow the

petitioner to use the property for a permitted purpose, then only a 10-foot setback reduction may be authorized.

Distinguish between hardships that are unnecessary in light of the unique conditions of the property and the purpose of the zoning ordinance from hardships that are inconsequential or not unique or because a variance would unduly undermine the purpose of the ordinance or the public interest.

In order for a variance to satisfy the public interest test, the question below must be answered negatively.

Does the granting of the variance result in harm to the public interest?

YES _____ NO X

EXPLAIN: Testimony revealed that the motors needed to operate the pool equipment will not be excessively noisy. There will be no additional impervious surface added to the property. The pool will not be visible from the water. Pool water will never be emptied onto the lot. Will be installing permeable pavers around the pool to replace the existing blacktop. The petitioner's lot to the north will be protected and never developed per the restrictive agreement that has been recorded.

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 June 9, 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.

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

Hearing Date: June 8, 2021 **Decision Date: June 8, 2021**

Applicants: J. Andrew and Mary Witteborg

Property: PIN Nos. 016-00-17292613B / Address 4086 County Highway V

Description of variance requested:

J. Andrew & Mary J. Witteborg petition for a variance from Section 3.05(2) of the Comprehensive Zoning Ordinance which requires structures be set back at least 75' from a county highway right-of-way centerline. The petitioners propose to construct an 8' x 26' residential addition as close as 66' from the right-of-way centerline. This property is 4086 County Highway V, in the Rural Residential (RR) zoning district.

DECISION:

On the basis of the Decision Making Worksheet (attached hereto and incorporated herein by reference as if set forth in full) and the record in this matter the Board of Adjustment finds and determines that:

A. The requested variance does meet the criteria set forth in Section 59.694(7) Wisconsin Statutes.

The Board of Adjustment voted to grant the petition for grant of variance by the following vote:

| | |
|-----------------|-----|
| Chris Anderson: | Aye |
| Aric Weber: | Aye |
| Arps Horvath: | Aye |
| Cheryl Mick: | Aye |
| Monica Nelson: | Aye |

Signed _____

Signed _____

Chairperson

Recording Clerk

Dated: June 22, 2021

Filed: June 23, 2021

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.

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

APPLICANTS NAMES: J. Andrew and Mary Witteborg

PROPERTY ADDRESSES / P.I.N.s: 4086 County Highway V / 016-00-17292613B

HEARING DATE: June 8, 2021

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

1. UNIQUE PHYSICAL PROPERTY LIMITATIONS.

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

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

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

YES X NO

EXPLAIN: The existing home on the property predates the adoption of county zoning. The required road setback, and locations of the well and septic system limit the area available for construction.

2. UNNECESSARY HARDSHIP.

Unnecessary hardship exists when a literal enforcement of the ordinance would unreasonably prevent the owner from using the property for a permitted purpose or when conformity with ordinance standards would be unnecessarily burdensome.

Considerations:

- Unnecessary hardship should be determined in light of the purpose and intent of the zoning ordinance in question, as well as any statute or administrative rule upon which the ordinance is based. (See page 4.) The facts of the case should be analyzed in light of these purposes. Only after considering the purpose(s) of the statute and/or ordinance, and the nature of the specific restriction(s) at issue, may a decision be made as to whether or not failure to grant a variance will cause an unnecessary hardship.
- Unnecessary hardship may arise due to a unique property limitation of a parcel (see #1, above). A variance is not warranted if the physical character of the property allows a landowner to develop or build in compliance with the zoning ordinance.

- Unnecessary hardship does not include considerations personal to the property owner (e.g., personal preference, desire to maximizing the economic value of the property, or financial hardship caused by ordinance compliance).
- Any self-created hardship, and/or any hardship that existed irrespective of the zoning ordinance in question are not proper grounds upon which to grant a variance.
- Alternatives to a variance (e.g., conditional use permit or restrictive covenant) may, as neither runs with the land, be preferable to accommodate a disability of the owner or owner's dependent.

In order for a variance to satisfy the unnecessary hardship test, one of the questions below (A or B) must be answered affirmatively.

- A. Does denial of the variance -- i.e., requiring compliance with the strict letter of the ordinance provision(s) in question (e.g., setbacks, height limitations, etc.) -- unreasonably prevent the owner from using the property for a permitted purpose?**

YES _____ NO _____

EXPLAIN:

OR

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

YES X NO _____

EXPLAIN: In that the denial of a variance would prohibit the owners from constructing an addition in a logical location onto a home the predates the adoption of zoning, the conformity with the regulations would be unnecessarily burdensome. The expansion is not adding bedrooms, only providing necessary closets for the existing bedrooms.

3. PUBLIC INTEREST/SPIRIT AND INTENT OF THE ORDINANCE.

A variance may not be granted which results in harm to public interests, nor thwarts the spirit and intent of the ordinance. In applying this test, the board should review the purpose statements of the ordinance (and any statute or administrative rule upon which the ordinance is based) in order to identify public interests. (See page 4.) The short-term and long-term impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the community, and even the state, should be considered. Review should focus on the general public interest, rather than just the narrow interests or impacts on neighbors, patrons, or residents in the vicinity of the project.

Cumulative effects are a proper consideration. For instance, in the context of shoreland zoning, the general availability of variances permitting the horizontal expansion of structures so close to the water's edge may have the cumulative effect of enclosing our lakes within a wall of impermeable surfaces to the exclusion of vegetation and impairing the ecological functions of the shoreland buffer.

A variance is not a popularity contest. The mere fact of public support or opposition is not, in and of itself, determinative of whether or not a variance is contrary to the public interest.

The board may grant only the minimum variance needed, i.e., the minimum variance necessary to relieve the unnecessary hardship. For instance, if the request is for a variance of 30 feet from the minimum setback, and a finding is made that a 10-foot setback reduction would allow the

petitioner to use the property for a permitted purpose, then only a 10-foot setback reduction may be authorized.

Distinguish between hardships that are unnecessary in light of the unique conditions of the property and the purpose of the zoning ordinance from hardships that are inconsequential or not unique or because a variance would unduly undermine the purpose of the ordinance or the public interest.

In order for a variance to satisfy the public interest test, the question below must be answered negatively.

Does the granting of the variance result in harm to the public interest?

YES _____ NO X

EXPLAIN: Testimony revealed that the proposed addition would not be harmful to the public interest in any way. The request is minimal and the addition will be no closer to the road than the existing residence.

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 June 9, 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.