

**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 hold a meeting on **Wednesday, April 17, 2019**, at **12:00 p.m.** in the **Door County Land Use Services Department Conference Room (C318), Door County Government Center**, at Sturgeon Bay, WI 54235.

**AGENDA**

- 1.0 Call to order and declaration of quorum.
- 2.0 Old Business.
  - 2.1 Read and act on Minutes of April 9, 2019, meeting.
  - 2.2 Final disposition of the following case considered by the Board of Adjustment at the April 9, 2019, meeting: Eric and Lisa Olesen.
- 3.0 Other Matters.
  - 3.1 Announce next meeting.
- 4.0 Vouchers.
- 5.0 Adjournment.

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

Fred Frey, Chair  
Board of Adjustment

04/10/19

\*Materials regarding these agenda items may be viewed at the Door County Land Use Services Department, 421 Nebraska Street, Sturgeon Bay, Wisconsin during normal business hours, 8:00 a.m. to 4:30 p.m., Monday-Friday. Application materials may also be viewed on-line beginning approximately four business days before the hearing at: <http://map.co.door.wi.us/Agendas-Minutes/Zoning%20Board%20of%20Adjustment/>

*In compliance with the Americans with Disabilities Act: 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 that meeting.*

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

**April 9, 2019**

**1.0 Call to order and declaration of quorum.**

The meeting was called to order by Chairman Frey at 6:30 p.m. on Tuesday, April 9, 2019, in the Peninsula Room (C121) of the Door County Government Center, Sturgeon Bay, Wisconsin.

**Board of Adjustment Members**

**Staff**

**Present:**

Fred Frey, Chairperson  
Aric Weber, Vice-Chairperson  
Bob Ryan  
John Young  
Monica Nelson

Jeff Kussow, Zoning Administrator  
Richard D. Brauer, Zoning Administrator

**Excused:**

Lars Johnson, First Alternate  
Chris Anderson, Second Alternate

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

**2.1 Eric and Lisa Olesen; reduction in floodplain fill requirement; Nasewauppee.**

Motion by Ryan, seconded by Young, to grant the petition for grant of variance. Motion carried. (4-1).

Aye: Frey, Young, Ryan, Weber.  
Naye: Nelson.

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

**3.0 Old Business.**

**3.1 Read and act on Minutes of March 26, 2019 meeting.**

Motion by Nelson, seconded by Young, to approve the minutes as presented. Motion carried. (4-0). (Note: Weber abstained.)

**3.2 Final disposition of the following case considered by the Board of Adjustment at the March 26, 2019, meeting: Lisa Bley.**

Motion by Ryan, seconded by Nelson, to approve the final disposition of the case. Motion carried unanimously.

**4.0 Other Matters.**

**4.1 Announce next meeting.**

Kussow announced that no future meetings have been scheduled. However, the Board members agreed to schedule a special meeting at 12:00 pm on April 17, 2019, in order to dispose of the case from this evening's case.

**5.0 Vouchers.**

All of the board members present submitted vouchers.

**6.0 Adjournment.**

Motion by Ryan, seconded by Young, to adjourn. Motion carried unanimously. Chairperson Frey declared the meeting adjourned at 7:20 p.m.

Respectfully submitted,

Jeff Kussow  
Zoning Administrator

Richard D. Brauer  
Zoning Administrator

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

**Hearing Date: April 9, 2019**

**Decision Date: April 9, 2019**

**Applicants: Eric A. & Lisa A. Olesen**

**Property: PIN 020-65-00032 / 3901 Snake Island Rd.**

**Description of variance requested:**

Eric and Lisa Olesen petition for a grant of variance from Section 4.3(1)(a) of the Door County Floodplain Zoning Ordinance which states that fill shall be placed one foot or more above the regional flood elevation and extend at least 15 feet beyond the limits of the structure. The applicants propose to rebuild a two story single family residence on the same exact footprint of the existing single family residence which is located as close as 5'6" from a side lot line. The fill around the entire new residence will meet the required floodplain fill elevation, and fill will extend 15 feet around the residence except on the north side of the residence where there will be 5'6" of fill placed up to the side property line. There is an existing retaining wall on the north side of the residence that will/may be rebuilt to hold the proposed fill. This property is located at 3901 Snake Island Road in Section 31, Town 28 North, Range 25 East, in the Town of Nasewaupsee.

**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
Bob Ryan:	Aye
John Young:	Aye
Monica Nelson:	Nay

Signed \_\_\_\_\_

Signed \_\_\_\_\_

Chairperson

Recording Clerk

Dated: April 17, 2019

Filed: April 18, 2019

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 permit for the authorized project has been obtained within such time.**

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

**APPLICANT NAME:** Eric A. & Lisa A. Olesen

**PROPERTY ADDRESS / P.I.N.:** 3901 Snake Island Rd. / 020-65-00032

**HEARING DATE:** April 9, 2019

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 lot is an irregular shape and the structure is a nonconforming structure. Relief from other setbacks would be needed if the structure was proposed to be relocated. The existing structure obtained the required approvals when constructed and the new plan does not expand the existing structure footprint. The lot is unique due to the irregular shape and the required road and shoreland setbacks. The lot is unique due to the location of the existing structure and the shape and size of the lot.

**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: Compliance would prevent the owner from improving the site.

OR

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

YES   X   NO           

EXPLAIN: The proposed plan maintains the existing footprint, raises the elevation of the dwelling, and improves the floodplain fill and stormwater runoff situation on the north side of the residence. There is not sufficient land to the north of the existing and proposed structure to comply with the requirement.

### **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: The variance would enable the improvement of the retaining wall that borders the neighbor's property and the variance was recommended for approval by the Town of Nasewaupee. Reconstruction will maintain the existing footprint, improve the fill/stormwater runoff situation, and be a good improvement to the waterfront and neighborhood. The impervious surface will not be increased. Granting the variance will aid in implementing the county development plan, promote planned and orderly land use development, protect property values and the property tax base, fix reasonable dimensional requirements to which structures shall conform, advance uses of land in accordance with its character and suitability, and preserve and enhance the county's rural characteristics.

**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 zoning permit for the authorized project has been obtained within such time.**

Dated this April 9, 2019

## 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.