

Notice of Public Meeting
Tuesday, April 25, 2023
3:00 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 April 11, 2023 meeting.
- 3.0 Final disposition of the following case considered by the Board of Adjustment at April 11, 2023 meeting.
 - 3.1 William K. & Sandra L. Bassler Trust; Multiple Occupancy Development side yard setback; Washington.
- 4.0 Educational session with staff and Corporation Counsel including but not limited to discussion of the following topics: ordinance changes, role of the BOA in ordinance administration, variance criteria, administrative appeals, decision-making processes, open meetings law, ex parte communications, etc.
- 5.0 Future meeting schedule:
 - May 23, 2023: 2 variance cases
 - June 13, 2023: ?
 - June 27, 2023: ?
- 6.0 Vouchers.
- 7.0 Adjournment.

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

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/85671404524?pwd=Vm5CdWZoY2ljaVF0V1JiT1N1WlBYQT09>
Zoom Webinar ID: 856 7140 4524
Passcode: 171119

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
412/23

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**

April 11, 2023

1.0 Call to order and declaration of quorum.

The meeting was called to order by Chair Frey at 4:30 p.m. on Tuesday, April 11, 2023, 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	Sandra Bassler
	Aric Weber	Kristin Rankin	Mark Flasch
	Bob Ryan		
	Monica Nelson		

Recused: Cheryl Mick

Excused: Arps Horvath

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

2.1 William K. & Sandra L. Bassler Trust; Multiple Occupancy Development side yard setback; Washington.

Motion by Weber, seconded by Ryan, to approve the variance with the condition that the coniferous tree screening along the south lot line be planted as shown in the site plan. Motion carried (4–0).

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

3.0 Read and act on minutes of March 14, 2023 meeting.

Motion by Nelson, seconded by Weber, to approve the minutes as presented. Motion carried unanimously (4–0).

4.0 Future meeting schedule:

- April 25, 2023: Training; start time 3:00 p.m.
- May 9, 2023: ?
- May 23, 2023: ?
- June 13, 2023: ?
- June 27, 2023: ?

There will no cases ready for May 9th.

Tonight's decision documents will be signed April 25th.

There will be 2 variance cases ready for May 23, 2023: Frey, Ryan, and Nelson are available. VandenLangenberg will check on availability for Horvath, Mick and Anderson. Weber stated he will be out of town for work most of May.

VandenLangenberg will reach out via e-mail for members' availability for June.

Meeting schedule as discussed noted.

5.0 Vouchers.

All BOA members' vouchers reflect a 1-hour meeting.

6.0 Adjournment.

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Motion by Nelson, seconded by Ryan, to adjourn. Motion carried unanimously (4-0). Chair Frey declared the meeting adjourned at 5:10 p.m.

Respectfully submitted by Sue Vanden Langenberg and Kristin Rankin, Zoning Administrators

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

APPLICANT(S) NAME(S): William K. & Sandra L. Bassler Trust
PROPERTY ADDRESSES / PIN: 1145 Old West Harbor Rd
HEARING DATE: April 11, 2023
DECISION DATE: April 11, 2023

DESCRIPTION OF VARIANCE REQUESTED:

William K. & Sandra L. Bassler Trust petitions for a variance from Section 4.08(8)(f)2.b.(2) of the Comprehensive Zoning Ordinance which requires Multiple Occupancy Developments to be located at least 40’ from side lot lines when adjacent to a single family residence in the Recreational Commercial (RC) zoning district. The applicant proposes a 25’ x 27’, two-story addition to the southern residence, which will be as close as 23’ to the south, side lot line. The property is at 1145 Old West Harbor Rd. and in a RC 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 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, with the condition that that the coniferous tree screening along the south lot line be planted as shown in the site plan, by the following vote:

Fred Frey Aye
Aric Weber: Aye
Monica Nelson Aye
Bob Ryan: Aye

Signed _____
Chairperson

Signed _____
Recording Clerk

Dated: April 25, 2023
Filed: April 26, 2023

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**

APPLICANT(S) NAME(S): William K. & Sandra L. Bassler Trust
PROPERTY ADDRESSES / PIN: 1145 Old West Harbor Rd
HEARING DATE: April 11, 2023
DECISION DATE: April 11, 2023

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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 unique property limitations include the location of the mound and driveway, and the multiple occupancy requirements such as the 20' spacing requirement between residential dwelling units and the 40' setback from the south, side lot line.

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 X

OR

- B. Is conformity with the regulation(s) unnecessarily burdensome?**
 YES X NO _____

EXPLAIN: Denial of a variance would be burdensome because a 1-bedroom residence is not reasonable. The property is zoned RC, and it is within the spirit and intent of the ordinance for this reasonably-sized residence.

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 town and the surrounding neighbors support the request. The request is for a modest sized 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.

Dated this: April 12, 2023

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.