

Notice of Public Meeting
Tuesday, April 27, 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 April 13, 2021 meeting.
 - 2.2 Final disposition of the following case considered by the Board of Adjustment at the April 13, 2021, meeting: The Jeannette Marlow Trust.
- 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
04/14/21

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.

To join the hearings and meeting via computer, go to:

<https://doorcounty.webex.com/doorcounty/onstage/g.php?MTID=e76458468ad293813ee1de5e25dc5e808>, enter your name and e-mail address when prompted (the password is entered for you), and then click "join." **OR, using the free smartphone app "Cisco WebEx Meetings,"** click "join" a meeting and then enter the meeting number/access code (187 202 7956) and password (Apr27boa2021).

OR, connect via phone by calling:

1-408-418-9388, and then 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 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.

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

April 13, 2021

1.0 Call to order and declaration of quorum.

The meeting was called to order by Chairperson Frey at 3:00 p.m. on Tuesday, April 13, 2021, in the dining room of the Door County Government Center Peninsula Room (C121), Sturgeon Bay, Wisconsin.

Board of Adjustment Members

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

Staff Present:

Richard D. Brauer, Zoning Administrator
Mariah Goode, Land Use Services Department
Director

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

2.1 The Jeannette Marlow Trust; floodplain fill requirement, ordinary high water mark setback accessory structures; Gardner.

Motion by Weber, seconded by Nelson, to grant the petition for grant of variance. Motion carried unanimously. (4-0).

Aye: Frey, Ryan, Nelson, Weber.

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 January 26, 2021, meeting.

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

4.0 Other Matters.

4.1 Discuss future meeting dates.

Brauer announced that the next meeting will be held on April 27, 2021. There have been no cases scheduled for public hearing that day. However, it will be necessary to meet to approve the minutes and decision document from today's proceedings. Board members Frey, Nelson, and Ryan agreed to attend that meeting. Frey and Ryan will attend virtually. There will be public hearings scheduled on May 11, 2021, and on May 25, 2021. Mariah Goode informed the board members that she would like to meet with Grant Thomas and the entire board (if possible) on one of those dates to discuss Board of Adjustment policies and procedures. The meeting will happen after any public hearings that have been scheduled. Staff will let the board members know what date has been chosen as soon as possible.

5.0 Vouchers.

All of the board members present submitted vouchers.

6.0 Adjournment.

Motion by Ryan, seconded by Nelson, to adjourn. Motion carried unanimously (4-0). Chairperson Frey declared the meeting adjourned at 3:40 p.m.

Respectfully submitted,

Richard D. Brauer
Zoning Administrator

RDB
04/14/21

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

Hearing Date: April 13, 2021 **Decision Date: April 13, 2021**

Applicants: The Jeannette Marlow Trust

Property: 3203 Stevenson Pier Lane / 012-02-11272431T

Description of variance requested:

The Jeannette Marlow Trust petitions for a variance from Section 4.3(1)(a) of the Floodplain Zoning Ordinance, which states fill shall extend at least 15' beyond a residence, and Section IV.B.2.b of the Shoreland Zoning Ordinance, which requires accessory structures be set back at least 75' from the ordinary high water mark (OHWM). The petitioner proposes to raise the structure so as to comply with the floodplain ordinance. Fill will extend only 3.7' to the east, and retaining walls to hold the fill will be as close as 70' and 34' feet from the Green Bay OHWM. The property is at 3203 Stevenson Pier Lane.

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.
- B. The requested variance also meets the criteria set forth in Section 7.3(4) (Variance) of the Door County Floodplain Zoning Ordinance.

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

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

Signed _____

Signed _____

Chairperson

Recording Clerk

Dated: April 27, 2021
Filed: April 28, 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.

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: The Jeannette Marlow Trust

PROPERTY ADDRESSES / P.I.N.s: 3203 Stevenson Pier Lane / 012-02-11272431T

HEARING DATE: April 13, 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: Small grandfathered lot, required setback from the ordinary high water mark, and location of private road easements on three sides. Residence predates the adoption of any zoning ordinance.

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: Small grandfathered lot, required setback from ordinary high water mark, and location of private road easement prevent the owner from developing in compliance. Due to water damage, the building will be rendered uninhabitable if the variance request is denied and the property owners are unable to do the proposed work.

OR

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

YES X NO

EXPLAIN: Denial of the variance would be unnecessarily burdensome in that it would prevent the owner from saving a structure that has been on the property for many years. Due to high water, the structure will be destroyed if no action is taken.

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 granting of the variance will allow the owner to elevate the structure in compliance with the Door County Floodplain Zoning Ordinance. This type of project will not be out of character with similar projects in the area. Neighbors and environment will not be affected by this project. The Town of Gardner supports the project.

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 April 14, 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.