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| <p>Notice of Public Meeting Tuesday, November 28, 2023 2:00 p.m.</p> | <p>DOOR COUNTY BOARD OF ADJUSTMENT</p> | <p><i>Door County Government Center</i> <i>Peninsula Room</i> <i>(C121, 1st floor)</i> <i>421 Nebraska Street, Sturgeon Bay, WI</i></p> |
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AGENDA

- 1.0 Call to order and declaration of quorum.
- 2.0 Read and act on minutes of November 14, 2023 meeting.
- 3.0 Final disposition of the following cases considered by the Board of Adjustment at November 14, 2023 meeting:
 - 3.1 Karen Schwedrsky; multiple occupancy rear lot line setback; Baileys Harbor.
 - 3.2 Community Church of Fish Creek; side lot line, rear lot line, and road setback; Gibraltar.
- 4.0 Convene in Closed Session for purpose of "...[c]onferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved..." under § 19.85(1)(g), Wis. Stats., including *Michael S. Bahrke, et al. v. Door County Board of Adjustment, et al.*, Door County Circuit Court Case No. 21-CV-123 and Wisconsin Court of Appeals Case No. 23-AP-1309; *Camp Zion, Inc. v. Door County, et al.*, U.S. District Court for the Eastern District of Wisconsin Case No. 23-CV-582; and *Michael S. Bahrke, et al. v. Christian Catholic Church d/b/a Christ Community Church of Zion a/k/a Camp Zion, Inc.*, Door County Circuit Court Case No. 23-CV-95.
 Roll call vote required.
- 5.0 Reconvene in Open Session.
 Roll call vote required.
- 6.0 Future meeting schedule:
 - December 12, 2023: One hearing.
 - December 26, 2023: No meeting.
 - January 9, 2024: ?
- 7.0 Vouchers.
- 8.0 Adjournment.

Members of the public who wish to monitor/observe the 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/87269259425?pwd=SHZ4NzdjNFJlVQxV0hKajEzZnRQQT09>

Zoom Webinar ID: 872 6925 9425
Passcode: 378443

Deviation from order shown may occur.

Robert Ryan, Vice-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/MKG
 11/16/23

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**

November 14, 2023

1.0 Call to order and declaration of quorum.

The meeting was called to order by Vice-Chair Ryan at 4:30 p.m. on Tuesday, November 14, 2023, in the Peninsula Room (C-121) of the Door County Government Center, Sturgeon Bay, Wisconsin.

Present: BOA Members

Bob Ryan
Monica Nelson
Arps Horvath
Cheryl Mick (Zoom):
Jeff Schmeckpeper

Staff

Mariah Goode, Director LUSD
Kristin Rankin, Zoning Administrator

Others

Karen Schwedrsky
Daniel Bowman
Mark Rowland

Excused: Aric Weber

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

2.1 Karen Schwedrsky; multiple occupancy development rear lot line setback; Baileys Harbor.

Motion by Nelson, seconded by Horvath, to approve the variance. Motion carried (4-1; Mick “nay”).

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

2.2 Community Church of Fish Creek; side lot line, rear lot line, and road setback; Gibraltar.

Motion by Horvath, seconded by Schmeckpeper, to approve the variance. Motion carried (4-1; Mick “nay”).

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

3.0 Read and act on minutes of October 24, 2023 meeting.

Motion by Nelson, seconded by Mick, to approve the minutes as presented. Motion carried (4-0; Schmeckpeper abstained).

4.0 Final disposition of the following case considered by the Board of Adjustment at October 24, 2023 meeting.

4.1 Andrew and Kerri Hah; extent of floodplain fill and water setback; Nasewaupee.

Motion by Nelson, seconded by Ryan, to approve the final disposition of the case as presented. Motion carried (3-0; Horvath and Schmeckpeper abstained).

5.0 Future meeting schedule:

- **November 28, 2023: business meeting (start time 2 p.m.)**
- **December 12, 2023: 1 case (start time 1 p.m.)**
- **December 26, 2023: No meeting**

11/28/23 business meeting: Ryan, Nelson, Horvath, Mick, Anderson and Schmeckpeper can attend.

12/12/23: 1 case: Ryan, Nelson, Horvath, Mick, Anderson and Schmeckpeper can attend.

Meeting schedule as discussed noted.

6.0 Vouchers.

The vouchers for all the BOA members reflect a 1.5-hour meeting. Mick will submit her voucher via e-mail.

7.0 Adjournment.

Motion by Nelson, seconded by Mick, to adjourn. Motion carried (5-0). Vice-Chair Ryan declared the meeting adjourned at 5:53 p.m.

Respectfully submitted by Mariah Goode, Director LUSD and Kristin Rankin, Zoning Administrator

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

APPLICANT(S) NAME(S): Karen Schwedrsky
PROPERTY ADDRESSES / PIN: 2931 CTH / 002150003 (Unit 3)
HEARING DATE: November 14, 2023
DECISION DATE: November 14, 2023

DESCRIPTION OF VARIANCE REQUESTED:

Karen Schwedrsky petitions for a variance from Section 4.08(8)(f)2.b.(1) of the Comprehensive Zoning Ordinance which requires all structures in the multiple occupancy development be at least 65 feet from the rear lot line. The applicant proposes to rebuild the existing residence and add a 20' x 30' second story addition over the existing footprint, and expand the deck to 9' x 32'; the structures will be as close as 47.8' and 56.6' from the rear lot line (south), respectively. The property is at 2931 CTH E (Unit 3, Happy Landing Condo) and in a HD 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 by the following vote:

Bob Ryan: Aye
Monica Nelson: Aye
Arps Horvath: Aye
Cheryl Mick: Nay
Jeff Schmeckpeper: Aye

Signed _____
Chairperson

Signed _____
Recording Clerk

Dated: November 28, 2023
Filed: November 29, 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): Karen Schwedrsky
PROPERTY ADDRESSES / PIN: 2931 CTH / 002150003 (Unit 3)
HEARING DATE: November 14, 2023
DECISION DATE: November 14, 2023

DESCRIPTION OF VARIANCE REQUESTED:

Karen Schwedrsky petitions for a variance from Section 4.08(8)(f)2.b.(1) of the Comprehensive Zoning Ordinance which requires all structures in the multiple occupancy development be at least 65 feet from the rear lot line. The applicant proposes to rebuild the existing residence and add a 20' x 30' second story addition over the existing footprint, and expand the deck to 9' x 32'; the structures will be as close as 47.8' and 56.6' from the rear lot line (south), respectively. The property is at 2931 CTH E (Unit 3, Happy Landing Condo) and in a HD zoning district.

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 multiple occupancy development, condominium ownership and residence predate comprehensive zoning. The unique property limitations are due to being a waterfront lot, parcel shape and limited buildable area based on the condominium.

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: Requiring the residence to be located in compliance with the multiple occupancy development setback is unnecessarily burdensome because the condominium limits the area in which the owner is allowed to expand the 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 proposed residence does not result in negative impacts to the sanitary system, or a wetland or the ordinary high water mark. The proposed residence will not encroach any further into the rear setback area. The town supported the variance, and had no concerns. No neighbors expressed concerns.

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: November 17, 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.

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

APPLICANT(S) NAME(S): Mark Rowland, on behalf of Community Church of Fish Creek (First Baptist Church of Fish Creek)

PROPERTY ADDRESSES / PIN: 9420 Cottage Row / 014391104B1

HEARING DATE: November 14, 2023

DECISION DATE: November 14, 2023

DESCRIPTION OF VARIANCE REQUESTED:

Mark Rowland, on behalf of the Community Church of Fish Creek petitions for variances from Sections 3.02(3)(b) and 3.05(6)(b) of the Comprehensive Zoning Ordinance which requires a principal structure be at least 10’ from a side lot line, 20’ from a rear lot line, and 19’ 2” from the edge of Cottage Row right-of-way. The applicant proposes a new entry on the west side of the building, a first floor addition on the northeast side of the building, and a second floor addition over the entire first floor. The additions will increase sanctuary seating, provide larger bathroom facilities and office spaces which will be as close as 8’ 6” from the side lot line (north), 10’ 8” from the rear lot line (east), and 6’ 4” from the edge of Cottage Row right-of-way (west). The property is at 9420 Cottage Row and in a VC 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 by the following vote:

Bob Ryan: Aye
Monica Nelson: Aye
Arps Horvath: Aye
Cheryl Mick: Nay
Jeff Schmeckpeper: Aye

Signed _____
Chairperson

Signed _____
Recording Clerk

Dated: November 28, 2023

Filed: November 29, 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): Mark Rowland, on behalf of Community Church of Fish Creek (First Baptist Church of Fish Creek)

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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 building is from the 1900’s and already encroaches into the setbacks to the south and west. The unique property limitations are due to the two road setbacks. There is only a small buildable area and the structures is built into a hill/bedrock.

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.
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- 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: Denial of the variance would be unnecessarily burdensome and unreasonable because the additions are to make the building entrances, bathroom, and elevator ADA accessible and safe. There is very limited buildable area in which to expand.

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.

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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.

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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 additions will improve the safety and access to the building and make the building ADA compliant, which will benefit the public. The town voted unanimously to support the variance, and the neighbors and town had no concerns.

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: November 17, 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:

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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.

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