

Notice of Public Meeting <b>Tuesday, April 26, 2022</b> <b>4:30 p.m.</b>	<b>DOOR COUNTY</b> <b>BOARD OF ADJUSTMENT</b>	Door County Government Center Peninsula Room (C121, 1st floor) 421 Nebraska Street, Sturgeon Bay, WI
<b>USE THE 4<sup>TH</sup> STREET ENTRANCE, ACROSS FROM THE LIBRARY.</b>		

**AGENDA**

- 1.0 Call to order and declaration of quorum.
- 2.0 Read and act on minutes of April 12, 2022 meeting.
- 3.0 Final disposition of the following cases considered by the Board of Adjustment at April 12, 2022 meeting.
  - 3.1 Martin; extent of floodplain fill and water setback; Gardner.
  - 3.2 Korte; water setback; Nasewaupsee.
- 4.0 Future meeting schedule:
  - June 14: 1 or more variances; start time 4:30 p.m.
- 5.0 Vouchers.
- 6.0 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

SKV  
4/18/2022

**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/86598646375?pwd=eURYOSsraGFCa2ZTTVI3OXpSbmxqUT09>  
**Zoom Webinar ID:** 865 9864 6375  
**Passcode:** 192921

*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](mailto:Lriemer@co.door.wi.us) so that we may determine how to best assist you.*

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

**April 12, 2022**

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

The meeting was called to order by Chair Frey at 4:34 p.m. on Tuesday, April 12, 2022, in the Peninsula Room (C-121) of the Door County Government Center, Sturgeon Bay, Wisconsin.

<b>Present:</b>	<b><u>BOA Members</u></b>	<b><u>Staff</u></b>	<b><u>Others</u></b>
	Fred Frey	Sue Vanden Langenberg	Joe Korte
	Aric Weber	Kristin Rankin	Mike Martin
	Bob Ryan		April Martin
	Monica Nelson		Linda Martin
	Cheryl Mick (via Zoom)		Jim Thibodeau

**Excused:** Arps Horvath  
Chris Anderson

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

**2.1 Martin; extent of floodplain fill and water setback; Gardner.**

Motion by Ryan, seconded by Mick, to approve the variance petition as requested. Motion carried (5-0).

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

**2.2 Korte; water setback; Nasewaupee.**

Motion by Mick, seconded by Ryan, to approve the variance petition as requested. Motion carried (4-1; Nelson "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 March 22, 2022 meeting.**

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

**4.0 Final disposition of the following cases considered by the Board of Adjustment at March 22, 2022 meeting.**

- 4.1 Deb Rusy & Mark Schessler; side yard setback; Liberty Grove.**
- 4.2 County of Door (The Ridges Sanctuary, Inc.); walkway width; Baileys Harbor**
- 4.3 Attorney James Smith (James J & Kathleen A Gibson Trust); town road setback; Sevastopol.**

Motion by Ryan, seconded by Nelson, to approve the final disposition of all cases. Motion carried unanimously (5-0).

**5.0 Future meeting schedule:**

- **May 24: 1-3 variances; start time 4:30 p.m.**

Decision documents for tonight's case will be signed at the April 26<sup>th</sup> meeting at 4:30 p.m.; Frey, Weber, and Nelson are available.

There are no cases ready for May 24<sup>th</sup>. There will be 1-2 new cases ready for June 14<sup>th</sup>; Weber and Ryan are available.

Meeting schedule as discussed noted.

**6.0 Vouchers.**

All BOA members present submitted vouchers reflecting a 1-hour meeting, Mick will e-mail her voucher to Vanden Langenberg.

**7.0 Adjournment.**

Motion by Nelson, seconded by Weber, to adjourn. Motion carried unanimously (5-0). Chair Frey declared the meeting adjourned at 5:21 p.m.

Respectfully submitted by Sue Vanden Langenberg, Zoning Administrator

DOOR COUNTY BOARD OF ADJUSTMENT  
Decision – Area Variance

APPLICANT(S) NAME(S): Linda Martin  
PROPERTY ADDRESSES / PIN: 3280 N Stevenson Pier Rd. / 012-02-11272413B3  
HEARING DATE: April 12, 2022  
DECISION DATE: April 12, 2022

**DESCRIPTION OF VARIANCE REQUESTED:**

Linda Martin petitions for variances from Section 4.3(1)(a) of the Floodplain Zoning Ordinance, which states fill shall be placed one foot or more above the regional flood elevation and extend at least 15’ beyond a residence, and Section IV.B.2.b. of the Shoreland Zoning Ordinance, which requires accessory structures be at least 75’ from the ordinary high water mark (OHWM) of navigable waters. The applicant is proposing to replace a residence destroyed by fire with a new residence meeting floodplain elevation requirements, and to place retaining walls on each side of the residence to hold floodplain fill in place. The applicant is proposing 6’ of fill on the west side of the residence and 10.5’ of fill on the east. The retaining wall on the west side will be as close as 59’ from the Green Bay OHWM and 53.5’ from the navigable stream. The retaining wall on the east side will be as close as 71.5’ from the Green Bay OHWM and 43’ from the stream. The property is at 3280 N Stevenson Pier Rd.

**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  
Monica Nelson: Aye  
Cheryl Mick: Aye

Signed \_\_\_\_\_  
Chairperson

Signed \_\_\_\_\_  
Recording Clerk

Dated: April 26, 2022  
Filed: April 27, 2022

**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):** Linda Martin

**PROPERTY ADDRESSES / PIN:** 3280 N Stevenson Pier Rd. / 012-02-11272413B3

**HEARING DATE:** April 12, 2022

**DECISION DATE:** April 12, 2022

**DESCRIPTION OF VARIANCE REQUESTED:**

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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  NO

**EXPLAIN:** The Martin parcel is a small lot which predates zoning, is confined by navigable water on each side and has a town road running through the parcel. The parcel is also located in the floodplain.

**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: The denial of a variance would require a new residence to be smaller than the existing, modest-sized residence in order to meet the floodplain fill requirements; therefore, 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: The residence will be of similar size to the existing residence which will not result in any harm to the public. The town supported the granting of the variance from the town road and the water setback as well as the reduction in fill. The new residence will be built in compliance with the water setback and floodplain elevation requirements.

**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 18, 2022

## 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):** Joseph A Korte Survivor’s Trust  
**PROPERTY ADDRESSES / PIN:** 6708 Cabots Point Rd. / 020-20-06020  
**HEARING DATE:** April 12, 2022  
**DECISION DATE:** April 12, 2022

**DESCRIPTION OF VARIANCE REQUESTED:**

Joseph A Korte Survivor’s Trust petitions for variances from Section IV.B.2.c.2) of the Shoreland Zoning Ordinance, which requires all portions of the residence be at least 50.5’ from the ordinary high water mark (OHWM) of navigable waters. The applicant is proposing a 16’8” x 40’, two-story addition to the existing residence as close as 43’ from the Green Bay OHWM and 41.3’ from the Sawyer Harbor OHWM. The property is at 6708 Cabots Point Rd.

**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  
Monica Nelson:           Nay  
Cheryl Mick:               Aye

Signed \_\_\_\_\_  
          Chairperson

Signed \_\_\_\_\_  
          Recording Clerk

Dated: April 26, 2022  
Filed: April 27, 2022

**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.**

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DECISION-MAKING WORKSHEET**

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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 Korte parcel has navigable water on both sides and has a private road easement running through the property to provide access to additional parcels to the south.**

**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  X

EXPLAIN:

**OR**

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

EXPLAIN: The denial of a variance would unnecessarily burdensome and does not change the location of the existing residence. The applicant is asking for minimal relief for an addition which will be located in the most logical location and will result in a modest-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.

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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 addition is proposed in the best possible location for the irregularly-shaped lot and will be located further from the ordinary high water mark than the existing residence. The addition will not affect the neighboring properties. The town supported the granting of the variance.

**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 18, 2022

## Door County Zoning Ordinance Purpose Statements

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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.

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.