

## GENERAL CRITERIA REGARDING ZONING HEARING CASES IN DOOR COUNTY

*This document is intended to provide a general guide to the issues and criteria to consider when making decisions regarding this type of zoning hearing. It should not be considered a complete guide to applicable statutes or ordinances.*

### I. ZONING AMENDMENT – MAP

*(See also Door County Zoning Ordinance section 11.08 and Wisconsin Statutes section 59.69(5).)*

By state law, petitions to rezone property which are under county zoning jurisdiction are heard at a public hearing before the county planning committee (called the Resource Planning Committee in Door County), which makes a recommendation to the county board for final decision. The town board of a town under comprehensive zoning does have, however, statutory authority to essentially "veto" rezonings approved at the county level that it (the town) does not support. (Comprehensively zoned towns may not, however, force the county to rezone property through this authority – the town can only prevent a rezoning. Note that towns with shoreland-only county zoning do not have any "veto" authority.)

A petition to change the zoning district designation of a property or properties may be submitted by: 1) the property owner(s) of all or some of the land in question, 2) the town board of the town in which the land is located, if the town is under county zoning, 3) the Door County Resource Planning Committee, or 4) any county board supervisor.

#### Considerations in evaluating petitions to rezone

- Was the existing district due to a mistake in the mapping process?
- Have circumstances changed for this property or surrounding properties since the original zoning district designation?
- How are the adjacent properties zoned and used?
- Is the land area in question large or small?
- Would the new district fit official plan guidelines for the property? Is the existing district a better fit?
- Is the request simply to economically benefit one property owner or a small group of property owners?
- Is there an overriding public good to be gained by rezoning the property? (If yes, rezoning might be justified even if other considerations point toward denying the petition.)

In general, a rezoning that 1) will economically benefit only one or a few property owners, 2) affects a small area of land, 3) is not a fit with official plans, 4) will allow for higher intensity or higher density uses than those allowed on surrounding properties, and 5) will not result in any overall public benefit may constitute "spot zoning," which may be deemed illegal.

Note that rezoning a property means that any use allowed in the new zoning district may be established on the property, now or in the future, not just the use being proposed by the current applicant. A property owner may volunteer to legally restrict the uses to which the property may be put, such as through a deed restriction naming the county as enforcement agency, but the planning committee may be reluctant to participate in such discussions or agreements for fear of inadvertently engaging in "contract rezoning," which is illegal.

## **GENERAL CRITERIA REGARDING ZONING HEARING CASES IN DOOR COUNTY**

*This document is intended to provide a general guide to the issues and criteria to consider when making decisions regarding this type of zoning hearing. It should not be considered a complete guide to applicable statutes or ordinances.*

### **II. ZONING AMENDMENT – TEXT**

*(See also Door County Zoning Ordinance section 11.08 and Wisconsin Statutes section 59.69(5).)*

A petition to amend the text of the county zoning ordinance may be submitted by: 1) any property owner affected by the proposed amendment, 2) the town board of a zoned town, 3) the Door County Resource Planning Committee, or 4) any county board supervisor.

As with zoning map amendments, petitions to amend county zoning ordinance text are heard at a public hearing before the Resource Planning Committee, which makes a recommendation to the county board for final decision. If a majority of the town boards under county zoning do not approve of an amendment passed at the county level, there is a statutory procedure those towns can follow to "veto" that text amendment. (Again, towns may not, through this authority, force the county to make amendments to the zoning ordinance text – they can only prevent an ordinance change.)

#### Considerations

- Will the amendment correct an inconsistency or loophole within the ordinance?
- Is the amendment more consistent with the goals of the comprehensive plan than existing ordinance text?
- Is the amendment contrary to the stated goals of the ordinance itself?

## GENERAL CRITERIA REGARDING ZONING HEARING CASES IN DOOR COUNTY

*This document is intended to provide a general guide to the issues and criteria to consider when making decisions regarding this type of zoning hearing. It should not be considered a complete guide to applicable statutes or ordinances.*

### III. CONDITIONAL USE PERMIT

*(See also Door County Zoning Ordinance section 11.04.)*

A conditional use permit application is a request to establish or expand a use that is allowed in that zoning district as a conditional use if it is determined that the use or expansion can be made compatible with the surrounding area. A conditional use permit is also required if a property owner wishes to expand a non-conforming use (a use previously established which would not be allowed under current zoning regulations). For areas under county zoning in Door County, the Resource Planning Committee holds a public hearing and makes the final decision on such applications. Appeals of those decisions are decided at a public hearing before the county Board of Adjustment, which would render a decision based on the same criteria as outlined below. Appeals of Board of Adjustment decisions proceed to the court system.

#### General criteria by which to evaluate conditional use permit applications

- Will the project affect the public interest? If yes, how?
- Would the proposal negatively affect public health, safety, and welfare? If yes, how?
- Would the use negatively affect the character of the surrounding area? If yes, how?
- Does the use meet the zoning ordinance's stated purpose and intent?

#### Specific potential criteria to evaluate, if applicable

- Affect on neighboring property values
- Similarity to other uses in the area
- Consistency with official comprehensive plan
- Sanitary waste disposal
- Potable water supply
- Solid waste disposal
- Noise, odor, dust
- Vehicular and pedestrian access
- Impact on neighborhood traffic flow
- Emergency services adequacy and ability to service site
- Surface water drainage
- Visual harmony with buildings in the neighborhood
- Exterior lighting glare or spillover
- Removal of natural vegetation or alteration of topography

## GENERAL CRITERIA REGARDING ZONING HEARING CASES IN DOOR COUNTY

*This document is intended to provide a general guide to the issues and criteria to consider when making decisions regarding this type of zoning hearing. It should not be considered a complete guide to applicable statutes or ordinances.*

### IV. PETITION FOR VARIANCE

*(See Door County Zoning Ordinance section 11.06 and Wisconsin Statutes section 59.694.)*

A petition for variance is a request to relax one or more of the dimensional requirements or restrictions of the ordinance (road, water, or property line setbacks; building size or height, etc.). The Door County Zoning Ordinance only allows so-called “area” variance petitions – it does not permit application for a variance where a use not allowed in that zoning district would be established (a “use” variance). Note that variances “run with the land” and not with the applicant; an approved variance is permanently attached to the parcel in question.

By state statute, petitions for variance from the county zoning ordinance are heard and decided upon at a public hearing before the board of adjustment or appeals (called the Board of Adjustment in Door County), members of which are appointed by the County Board of Supervisors. Appeals of Board of Adjustment decisions are heard in the court system.

#### Criteria for evaluating “area” variance petitions

*(Note: Responses to the three bolded questions below should be "yes" in order to justify granting the variance in accordance with legal/case law criteria.)*

- **Do physical limitations of the property prevent compliance with ordinance standards?** *Examples of physical limitations include wetland presence, parcel shape, steep slopes, etc.*
- **Will granting the variance have no affect on the public interest?**
  - *Public interest includes additional runoff, affects on the quality of fish or wildlife habitat, impacts on scenic beauty, etc. Cumulative effects must be considered.*
  - *Public interest includes the interest of the public at large, not just that of nearby property owners.*
  - *Lack of local opposition does not in itself mean that a variance will not harm the public interest.*
  - *A variance should include only the minimal relief necessary to allow reasonable use of the property.*
  - *The board's actions should be consistent with stated ordinance objectives.*
- **Is an “unnecessary hardship” present?**
  - *Does compliance with the ordinance unreasonably prevent the owner from using the property for a permitted purpose, or is conformity with restrictions unnecessarily burdensome for the property owner?*
  - *Is there a unique physical property limitation? (See above.)*
  - *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.*
  - *Financial hardship is not grounds for a variance.*
  - *Self-imposed hardship or personal preference are not grounds for a variance. (Note that “self-imposed hardship” has been determined by courts to mean either current or former owners.)*
  - *The hardship cannot be one that would have existed in the absence of zoning.*

One final consideration: Will granting the variance serve an overriding public interest? (If yes, granting the variance may possibly be justifiable even if other criteria point toward denial.)



**County of Door  
PLANNING DEPARTMENT**

County Government Center  
421 Nebraska Street  
Sturgeon Bay, WI 54235

---

**STAFF REPORT  
Petition for Zoning Amendment - Map**

**Applicant Information**

- Name & property address:
- Parcel identification number:
- Petition Request:

**Description of Subject Property and Surrounding Area**

**Lot Configuration**

- Lot area, width, and depth:
- Frontage - water, road:

**Surrounding Area (include zoning districts)**

- North:
- South:
- East:
- West:

**Zoning Considerations**

	<u>Existing District</u>	<u>Proposed District</u>
Zoning district		
• Minimum lot size		
• Minimum lot width		
• Allowable number of additional lots.		

- Purpose of existing zoning district - DCZO Section 2.03(X): .
- Purpose of proposed zoning district - DCZO Section 2.03(X): .
- The purpose of the proposed rezoning is to...(include background information and existing and proposed structures and uses.)
- Please see the attached Table of Principal Uses to compare the types of uses allowed in the existing zoning district as opposed to the proposed zoning district.

**Considerations in evaluating petitions to rezone**

- Was the existing district due to a mistake in the mapping process?
- Have circumstances changed for this property or surrounding properties since the original zoning district designation?
- How are the adjacent properties zoned and used? Will rezoning allow for higher intensity or higher density uses than those allowed on surrounding properties?;
- Would the new district fit official plan guidelines for the property? Is the existing district a better fit?
- Is the request simply to economically benefit one property owner or a small group of property owners?
- Is there an overriding public good to be gained by rezoning the property? (If yes, rezoning might be justified even if other considerations point toward denying the petition.)

**Comprehensive Plan Considerations**

- County comprehensive plan future land use map designation and description.
- Relevant goals/objectives/action items from comprehensive plan.
- Other relevant text from county comprehensive plan.

Initials  
Month x, xxxx

### CONDITIONAL USE PERMIT WORKSHEET

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Project

To issue a Conditional Use Permit, the Resource Planning Committee must determine that the proposed use at the proposed location will not be contrary to the public interest and will not be detrimental or injurious to the public health, public safety, or character of the surrounding area.

Is the proposed project consistent with the Door County Comprehensive Plan?                      YES    N/A    NO

Is the proposed project consistent with an officially adopted town plan?                      YES    N/A    NO

**YES**   **N/A**   **NO**   **Public Interest**

        1.   Will the proposed project enhance or sustain property values in the area?  
\_\_\_\_\_  
\_\_\_\_\_

        2.   Is the proposed use similar to other uses in the area?  
\_\_\_\_\_  
\_\_\_\_\_

**Health**

        3.   Has provision been made for an approved sanitary waste disposal system?  
\_\_\_\_\_  
\_\_\_\_\_

        4.   Has provision been made for a potable water supply?  
\_\_\_\_\_  
\_\_\_\_\_

        5.   Has provision been made for solid waste disposal?  
\_\_\_\_\_  
\_\_\_\_\_

        6.   Has provision been made to control noise, odor, and dust?  
\_\_\_\_\_  
\_\_\_\_\_

**Safety**

        7.   Has adequate provision been made for safe vehicular and pedestrian access?  
\_\_\_\_\_  
\_\_\_\_\_

        8.   Will the proposed project adversely impact neighborhood traffic flow and congestion?  
\_\_\_\_\_  
\_\_\_\_\_

        9.   Is there adequate access for emergency services to service the site?  
\_\_\_\_\_  
\_\_\_\_\_

        10.   Has adequate provision been made for proper surface water drainage?  
\_\_\_\_\_  
\_\_\_\_\_

YES   N/A   NO   **Character of Area**

        11. Will the proposed building(s) contribute to visual harmony with existing buildings in the neighborhood, particularly as related to scale and design?

\_\_\_\_\_  
\_\_\_\_\_

        12. Will the proposed project protect against excessive exterior lighting glare or spillover onto neighboring properties?

\_\_\_\_\_  
\_\_\_\_\_

        13. Will the proposed project protect the natural character of the area and retain natural vegetation and topography?

\_\_\_\_\_  
\_\_\_\_\_

Notes/Other Considerations: \_\_\_\_\_

YES   NO   **Burden of Proof**

     Has the applicant seeking the conditional use permit met the burden of proof regarding the criteria by which the conditional use permit shall be evaluated?

\_\_\_\_\_

**Possible Conditions**

Noise: \_\_\_\_\_

Dust: \_\_\_\_\_

Access: \_\_\_\_\_

Parking: \_\_\_\_\_

Hours: \_\_\_\_\_

Lighting: \_\_\_\_\_

Screening: \_\_\_\_\_

Increased Setbacks: \_\_\_\_\_

Signs: \_\_\_\_\_

Building Code: \_\_\_\_\_

Storm water: \_\_\_\_\_

Project Completion Date: \_\_\_\_\_

Others: \_\_\_\_\_

\* All conditional use permits expire 12 months from the date of authorization by the RPC where the RPC determines that no action has commenced to establish the authorized use.

## Door County Planning Department Request for Town Recommendation

The applicants hereby petition the Door County Board of Adjustment for a variance from Section 3.02(3)(a) of the Door County Zoning Ordinance. Section 3.02(3)(a) states the required lot size for a parcel in the Single Family Residential 20,000 (SF20) zoning district is 100' wide and 20,000 square feet in area.

The applicants propose to construct an addition onto an existing residence located on a parcel that was illegally created in 1983 which is 50.4' wide and contains 7,800 square feet in area.

The (circle one) Town Board / Planning Committee of the Town of \_\_\_\_\_ held a legally noticed and posted meeting on \_\_\_\_\_, at which, by a vote of \_\_\_\_ (Yea) to \_\_\_\_ (Nay), the town recommended (check one) \_\_\_\_ **SUPPORT** \_\_\_\_ **DENIAL** for a variance.

**Reason(s) for the town's decision:**

---

---

---

---

---

---

**Is the proposal consistent with the Town Comprehensive Plan?**

---

---

---

---

---

---

**Concerns or objections the town may wish to see potentially addressed through conditions:**

---

---

---

---

---

---

\_\_\_\_\_  
Town Clerk Signature

\_\_\_\_\_  
Date

**\*See reverse for variance criteria.**

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

APPLICANT NAME \_\_\_\_\_  
PROPERTY ADDRESS / P.I.N. \_\_\_\_\_  
HEARING DATE \_\_\_\_\_

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:

---

---

---

---

**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 \_\_\_\_\_ NO \_\_\_\_\_**  
**EXPLAIN:** \_\_\_\_\_  
 \_\_\_\_\_

**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 \_\_\_\_\_**

**EXPLAIN:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Has the applicant seeking a variance demonstrated that each of the three standards has been satisfied in this case? YES \_\_\_\_\_ NO \_\_\_\_\_. If yes, then substantial justice will be done by granting the variance.**

**For variances granted: Unless the Board establishes an alternate expiration date, the privileges granted by this decision shall become void after one (1) year, during which time the action authorized by the variance must be commenced and/or completed, as specified by the Board. This variance shall become void in (choose one):**

**\_\_\_\_\_one year (the privileges granted by this decision shall become void after one year unless the zoning permit for the authorized project has been obtained with such time.)**

\_\_\_\_\_

**\_\_\_\_\_other (specify the expiration year and actions that must occur, if any)**

\_\_\_\_\_

Dated this \_\_\_\_\_.

## 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.