

## 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.

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### **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?

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### 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

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### 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.)