

FINDINGS OF FACT AND CONCLUSIONS OF LAW
Village of Ephraim Zoning Board of Appeals

Findings of Fact

Having heard the testimony and considered the evidence presented the Board finds the following facts:

Case No. 159
Filing Date. 8/6/2024
Notice Date. 8/12/2024
Hearing Date. 8/22/2024

1. The applicant or appellant is (name and address)
Leslie and Roy Harsch, 9931 Water Street, Ephraim, WI 54211
2. The applicant or appellant is the owner of the following described property which is the subject of the application or appeal: **121-01-24312723B1**, Village of Ephraim, Door County, known as (street address): **9931 Water Street.**
3. The property is presently in use as. **Single-family residence/zoned Protected Waterfront (PW)**
4. The property includes a nonconforming structure/use described as: **The residence is non-conforming to setbacks.**
5. The property has been the subject of a prior appeal/**variance**/conditional use described as: **A 14' variance from the 15' side yard setback requirement. Variance from footprint increase standard on Protected Waterfront (PW) district of the Ephraim Zoning Code. Tabled – The Board of Appeals asked for more information.**
6. The applicant or appellant proposes: **A 14' variance from the 15' side yard setback requirement. Variance from footprint increase standard on Protected Waterfront (PW) district of the Ephraim Zoning Code.**
7. The appellant requests:
 - an appeal of the Zoning Administrator's determination
 - a use variance
 - an area varianceunder Section **17.24** of the ordinance.

The features of the proposed construction and property that relate to the grant or denial of the appeal are (language/standards of the ordinance in question): **The proposal for the construction of 56 square foot addition to the subject property.**

Structures in the PW district are limited to those in existence. Additions to existing structures in the PW district that add footprint can only occur with a variance or with conditional use review by the Plan Committee if the footprint from a structure existing on the property that is to be removed can be reclaimed. Additionally, the proposed addition is noncompliant with the 15' side yard setback requirement of the zoning code. Much of this work has already been completed as work was done without approval and permitting. This project came before the Board of Appeals last fall, a decision at that time was tabled for more information. The application was re-submitted with additional information as requested. Additionally, as described in the submitted application Mr. Harsch has worked out an arrangement with his neighbor to the South Mr. Munn regarding a small land swap that would allow the area in question to be sided 1ft from the property line as opposed to on the property line as previously submitted. This does make the submittal slightly more conforming than the previous. While it is a modest proposed change to the property line it does create some additional considerations. Should the Board approve the variance request it should be done with the condition that Mr. Munns apply for and be granted at a future hearing for variance himself. By moving a property line via the triangle property swap and making Harsch's property slightly more conforming it would make the Munns' property slightly less conforming.

CONCLUSIONS OF LAW

Based on the above findings of fact, the Board concludes that:

Variance – the variance (does/does not) meet all three of the following tests:

Unnecessary hardship

- For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The Board of Appeals must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term, and cumulative effects of a variance on the neighborhood, the community, and the public interests. This standard reflects the new *Zievogel* and *Waushara County* decisions.
 - For a use variance, unnecessary hardship exists only if there is no reasonable use of the property without the variance.
- A. Unnecessary hardship (is/is not) present in that literal enforcement of the terms of the Ordinance (would/would not) be unnecessarily burdensome to the applicant because **the hardship is caused by personal inconvenience rather than the property itself.**

- B. The hardship (is/**is not**) due to physical limitations of the property rather than the circumstances of the appellant because **there is a working/usable kitchen that has been there for a long time.**
- C. The variances (**will**/will not) be contrary to the public interest and will observe the spirit of the ordinance, secure public safety, and welfare, and do substantial justice, because **the intent of the zoning ordinance in the Protected Waterfront district is to provide for as much open viewing space along the shoreline as possible. As an important contribution of the Ephraim Historic District owners of residences in the PW district are encouraged to use and maintain existing residences. Since most of the residential buildings in this district are sited on small non-conforming lots that would otherwise prohibit the erection of such structures under existing ordinance, the Village position is that residences shall be restricted to those in existence.**

ORDER AND DETERMINATION

Based on the above findings of fact, conclusions of law, and the record in this matter, the Board orders:

~~Appeal/Interpretation~~ — the Zoning Administrator's order/interpretation of the Zoning Ordinances or map is (affirmed/modified/reversed) and the administrator is ordered to:

Variance – the requested variance is **denied**/granted/granted-in-part) subject to the following conditions/mitigation:

- 1.
- 2.
- 3.

Unless denied, the Zoning Administrator is directed to issue a Zoning Permit incorporating these conditions and certifying by the petitioner/applicant's signature that he/she understands and accepts the conditions.

Expiration of permit. Any privilege granted by this decision must be exercised within ____ months of the date of this decision after obtaining the necessary building, zoning, and other permits for the proposed construction. This period will be extended if this decision is stayed by the order of any court or operation of law.

Revocation – This order may be revoked by the Board after notice and opportunity to be heard for violation of any of the conditions imposed.

Appeals – This decision may be appealed by a person aggrieved by this decision or by any officer, department, board, or bureau of the municipality 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 municipality assumes no liability for and makes no warranty as to the

reliance on this decision if construction is commenced before the expiration of this 30-day period.

ZONING BOARD OF APPEALS

Signed _____
Chair

Attest _____
Clerk

Dated _____

Filed _____