

EPHRAIM BOARD OF APPEALS MINUTES

Thursday, August 22, 2024, 4:30 PM

Present: Chair-Karen McMurtry, Fred Bridenhagen, Sara Glenn, Laird Hart, Keith Krist

Staff: Brent Bristol-Administrator, Andrea Collak-Clerk/Treasurer

Guests: Thomas Munns, Roy Harsch, Leslie Harsch, Steve Sauter, Ken Nelson, BD Thorp, Michael McCutcheon, Brittney Larsen, Michael Larsen, Paul Jones, Colin Welford, Scott Pearson, Diane Taillon, Pamela Mache, Paul Wilson

1. **Call to Order:** The meeting was called to order by McMurtry-Chair at 5:00 PM.
2. **Quorum:** A quorum of the Ephraim Board of Appeals is present for this meeting.
3. **Compliance with open meeting law and public notice requirements**

Bristol confirmed that the agenda was posted in accordance with open meeting law and that public notice requirements have been met.

4. **Changes in Agenda:** None.
5. **Announcement of Proceedings:**

Chair McMurtry read the Announcement of Proceedings Role of the Board

The Village Board of Appeals is an appellate board required by state law in any municipality that has adopted a zoning ordinance. The board does not have the authority to amend or repeal any provision of the zoning ordinance. Its authority is limited to appeals regarding interpretations of ordinance provisions, and considerations of variances. The board functions like a court. Its purpose is to give a full and fair hearing to any person whose property interests are affected by these matters. Its job is to apply the zoning ordinance and appropriate legal standards to the facts of each case. The board meeting and public hearings are open to the public. A taped recording is being made of the proceedings.

The Appeal of the Board Decisions

A decision of the board may be appealed by commencing an action in the circuit for this county within 30 days after the date of filing of the decision in the office of the board.

Instructions for Witnesses

Anyone wishing to speak should wait until called upon as a witness; address your comments and questions to the chair and state: Your name and place of residence, your qualifications to speak on this matter, the source of your information, and whether you favor, oppose, or are only providing information in this matter and your concerns.

6. **Pamela Mache – 9859 Hoganson Lane**
 - a) **Variance from 40' front setback standard**

Public Hearing opened by Karen McMurtry. The notice was read into the record. This is case number 157, notices were sent out on August 12, 2024, and the hearing date is August 22, 2024, to hear and transcribe testimony both for and against, written and verbal. Public Hearing on zoning appeal application on property #121-01-24312723X, variance from 40' front setback standard of Ephraim Zoning Code in the R1 Zoning district of the Ephraim Zoning Code.

The property is zoned R1. The proposal is to construct a new entry deck with an overhead metal awning. This new proposed work does not meet the 40' rear setback and requires a 12' variance. The deck is a replacement for the existing but is 18" larger to the east and 12" larger to the south.

Chair McMurtry asked the committee members if they inspected the site. Some of the committee members knew the property in question, some passed by and visually inspected the property in question, and some used the pictures provided.

Statement by the Applicant

The front deck is currently approximately 55' from the center of the road. They are requesting the new front deck to be approximately 53 and ½ 'from the center of the road. On the north/south, they are requesting an additional 9" in length. The applicant is also requesting the addition of a metal awning (50" wide x 36" deep) which would be approximately 57' from the road.

Pamela Mache in her letter explained that unnecessary hardship is present because the current front deck is very small and impedes natural movement while entering the home. It was originally built to accommodate the presence of a large tree to the south which no longer exists. The size and lack of overhead coverage led to icing up at the entrance to the home, leading to slippery and dangerous conditions. The rise of the steps on the current front deck is not code compliant. By extending the footprint of the steps it allows for one additional step and decreases the rise. The addition of a small awning would allow for a safer and dryer entry to the home, especially when carrying luggage, groceries, and grandchildren. All the owners are seniors.

Mache explained that the home is approximately 5' into the required setback, making a deck for entry very limiting and unsafe. The home requires a front deck for entry because of the grade of the lot. A natural stream to the rear of the property (running North-South) likely limited the original setback when built. The roof pitch doesn't easily accommodate a redesign of the roof without a complete re-do for a covered entry.

The applicant believes that the variance will not negatively affect anyone's interest, safety, or welfare. The proposed changes will allow for easier and safer entry into the home and straightening the steps will make it easier to climb and look better. This update would also answer the safety issue of entering the home for the welfare of the owners and visitors.

Overall, they are merely requesting an increase in size of 18" forward of the current front entry deck, and 12" to the south, and an overhead awning. This allows for a slightly larger platform and a longer, straighter set of stairs.

Reading of the Staff Report

The subject property, parcel #121-01-24312723X, is owned by Pamela Mache and located at 9859 Hoganson Lane. The property is zoned R1 Residential and is used as a single-family residence.

Bristol in his notes stated that the proposal calls for a small addition to and replacement of the entry steps/deck and the construction of an overhead metal awning above the entry on the East side of the structure that faces Hoganson Lane.

A regular zoning permit cannot be issued because the new work is subject to current setbacks and the 40' front yard setback is not met.

The setback is 40' which is measured from the edge of the road right of way. The right of way, on the side of the road, is 25'. This 25' plus the 40' setback is how we got to the 65' number.

The deck with the additional size per letter is 53.5' from the center of the road. $53.5 - 25 = 28.5$
..... $40 - 28.5 = 11.5'$ of minimum relief needed.

The applicant is requesting:

- A 12' Variance from the 40' front yard setback minimum of the Ephraim code of ordinances.

Correspondence:

Bristol reported that there was one piece of correspondence received concerning this matter.

Harold Q Aavang, has absolutely no objection to this variance. It is a completely appropriate, sensible, and safer replacement to the existing porch and steps, as well as adding to the safety of the porch by putting a canopy over the top of the entry on the porch.

It was confirmed that there was no ex parte communication.

Witness or Visitor Statements: The neighbor living at 9080 Hoganson Lane, and a full-time resident, has no objection to this project. It will be aesthetically pleasing to the neighborhood. They are a great addition to the neighborhood. He does encourage this variance.

Glenn noted that she appreciates the drawings and the detail that was provided. It was very thorough and clear. It would be more aesthetically appealing than what is currently there. McMurtry, Krist, and Hart agreed. A new entry deck with an overhead metal awning will address a safety issue.

Bridenhagen believes that the new porch will help with runoff. He is all for it.

Glenn asked whether they would require a variance if they were to tear the deck down and replace it with the same size deck. Bristol stated that if there is no expansion and no overhead awning it could be done as a repair/replacement project and avoid the variance request. However, the entry porch is still within the setback.

Findings of Facts: Separate form included.

Public Hearing Closed by Karen McMurtry.

Conclusions of Law:

Unnecessary Hardship: The current deck is not to code and is unsafe. They are asking for minimal relief from the code to make the deck safe and functional. It is an appropriate request.

Unique Physical Property Limitations: The location of the house and entry porch is within the setback.

No Harm to Public Interest: This improvement is not harmful to anyone, and it will aesthetically improve the structure. It will have no impact on traffic. It will also make the area accessible and safer.

McMurtry moved, Krist seconded to grant the requested 12' variance from the 40' front yard setback minimum standard of the Ephraim code of ordinances for the updated entry porch and overhead awning as presented with no conditions, all ayes and the motion carried.

7. Michael Larsen – 2951 Valentine Lane

b) Variance from 10' side setback standard

Public Hearing opened by Karen McMurtry. The notice was read into the record. This is case number 158, notices were sent out on August 12, 2024, and the hearing date is August 22, 2024, to hear and transcribe testimony both for and against, written and verbal. Public Hearing on zoning appeal application on property #121-25-0001F, variance from 10' side setback standard of Ephraim Zoning Code in the R1 Zoning district of the Ephraim Zoning Code.

The property is zoned R1 Residential. The proposal is for the construction of a new accessory structure (Chicken Coop). This new work does not meet the 10' side setback and requires a 5' variance. The chicken coop, while not finished, was constructed without permits. If a variance is granted for setback relief, the Larsens will additionally have to go before the Plan Committee to seek approval for having an additional accessory structure on the property.

Chair McMurtry asked the committee members if they inspected the site. Some of the committee members knew the property in question, some passed by and visually inspected the property in question, and some used the pictures provided.

Statement by the Applicant

The applicant would like to use the chicken coop for raising chickens for eggs. The structure is located near the east property line, between the shed and patio/house. The structure is made of plywood with plastic roofing and chicken wire. One chicken coop and run enclosure measure a 13'7" x 19'8" footprint with a single rake roof reaching a maximum height above the ground of approximately 13' (at the peak of the roof and lowest point of the ground). When finished they plan to paint it to match the look of the house and other buildings on the property. It is only a temporary structure and can be taken down anytime.

Michael Larsen noted that they purchased the property in 2021. M. Larsen stated that in the Spring of 2022, some friends offered their 3 sons 8 chickens to raise. They picked up a small coop from Tracker Supply and placed it on the top of what had been a planter box out back of the house. To try and protect the chickens a modest 4' tall run enclosure was built. Once a net was put over the top, the protection from predators was not very good. All 8 chickens were killed in late winter/early spring 2023. Because children loved taking care of the chickens and collecting eggs, they decided to replace them and built a new run enclosure that is more substantial and safer against predators. It is tall enough so that he can help the children when needed. Larsen mentioned that it never occurred to him that they might be encroaching on a property line, certainly no more than the pre-existing buildings already did. The construction is currently halted as he realizes a permit is required and a variance for the distance from the property line. They talked with their closest neighbors, and they said it was fine with them (trying to be considerate neighbors).

The Unnecessary hardship is present because the location where the enclosure was built was a previous enclosure and before that a set of planter boxes. It was already free of trees and nominally flat. It is also close to the back door, a source of water, and mostly obscured from the surrounding streets and neighbors (except the closest neighbor which was once part of the same property).

Compliance with the terms of the ordinance is prevented by the following unique feature of this property because the property was once combined with the neighboring property and was laid out without a need to be concerned with a side property line. Once the two properties were divided, the setback was already encroached on.

The placement of the coop/run is the least visible from all but the closest neighbor and when finished it will visually match the coloring of the main house. The placement is consistent with the other pre-existing structure in terms of placement relative to the property line. It minimizes the visibility from the streets and most other neighbors and preserves the most trees. This is the most convenient and best location for the enclosure.

M. Larsen concluded that when complete the outer chicken run enclosure will be painted to match the house and the shed (cream and burgundy trim) once they have permission to finish the structure. They would like to make it a very appealing looking and visually pleasing structure. B. Larsen noted they are locking the chickens in the nesting box for the night to deter the predators.

Reading of the Staff Report

The subject property, parcel #121-25-0001F, is owned by Michael Larsen and Brittney Rae Larsen and is located at 2951 Valentine Lane. The property is zoned R1 Residential and is used as a single-family residence.

The proposal is for and after the fact variance relating to the construction and location of a chicken coop/run measuring roughly 14'x18' to be permitted. Much of the work on this structure is already complete and was done without permission.

A regular zoning permit cannot be issued because the 10' side yard setback for accessory structures is not met. Should a variance be granted on the project it should be done contingent upon Larsen's obtaining a conditional use permit from the Ephraim Plan Committee for the additional accessory structure. Residential properties in this district are permitted to have more than one accessory structure in Ephraim, but only with Conditional Use approval.

The applicant is requesting:

- A 5' Variance from the 10' side yard setback minimum or the Ephraim code of ordinances.

Correspondence:

Bristol reported that there were four pieces of correspondence received concerning this matter.

Kim Barkmeyer, 2964 Valentine Lane, lives across the street from the Larsen's and has no objection to my neighbor building a chicken coop and the chickens running at large on occasion. It keeps it interesting.

Sarah Martin, 9869 Townline Drive, is in support of the Larsens with their Board of Appeals case #158. They have started "chicken sitting" for them while they are out of town and have enjoyed helping them out as well as the eggs. They do a great job caring for the chickens and installing a safer coop was essential. Martin hopes the Board of Appeals will support variance for them.

Wiltgen Family, 9948 S Norway Street, are the neighboring owners and have no objections to the zoning variance request made by petitioner Michael S. Larsen.

Scott and Duska Pearson, 2928 Valentine Lane, are not in support of approval for the new accessory structure variance (currently a standing chicken coop) for the following reasons:

1. The structure does not adhere to current setback standards as laid out in the Ephraim Zoning Code.
2. The structure was partially constructed without obtaining the required permits.
3. The accessory structure is clearly visible from the street, adjacent properties, and properties across the street from the accessory structure.
4. The accessory structure in question will be visually inconsistent with other structures on the property and immediate surroundings in final form.

It was confirmed that there was no ex-parte communication.

Witness or Visitor Statements: Brittany Larsen apologized for putting up the chicken coop and not going through the proper channels. B. Larsen noted that they panicked when their chickens got eaten. They were just trying to keep the chickens alive. They picked the location to be the most hidden from the road and one that made the most sense to them. It is right by the water source. B. Larsen appreciates the consideration from the Board of Appeals.

Glenn asked whether they considered building a narrower structure, away from the lot line to meet the setbacks. M. Larsen stated that the footprint was selected to match existing planter boxes that were on the property. They thought that the planter boxes the way they were built would provide adequate protection.

Bridenhagen asked whether they considered re-designing the coop once they found out they were not compliant. B. Larsen said that they have already put lots of time and effort into the structure and they decided to proceed with requesting a variance. There is an ordinance that the Board of Appeals is trying to follow, Bridenhagen said. It seems that the chicken coop can be re-designed.

M. Larsen asked whether the Village has a pre-existing variance for the existing shed on the property. Because that is what led them to build the chicken coop in that area. The shed is even further away. Bridenhagen asked whether they realized they were building a structure and that the Village of Ephraim requires building permits. M. Larsen said they started with the portable chicken coop. B. Larsen added that they checked with the Village Zoning Administrator - Bristol whether that chicken coop requires a permit, and he said no. The chicken started to get eaten, they went into a panic mode and built the structure without thinking about it and checking with Bristol again.

Bristol noted that if variance for the shed on the property was granted it would be single structure/use related.

Glenn asked whether they had a survey done when they bought the property to have an accurate depiction of the property. Glenn was looking at the 2005 survey. B. Larsen said that the Village records differ from what they have. It lists different acreages and property lines. The survey was not presented. Bristol said that the survey the Village presented is what is recorded with the County GIS site. The property was not split during Bristol's administration. He could not permit a new certified survey map that would draw a division in that location because it would create a non-conformity. The line would have to be 10ft from that accessory building. Bristol believes that the split was done before the ordinance was in place, slipped through the cracks, or something. Glenn noted that the chicken coop would still encroach by 5 feet even with the survey the applicant has done.

Hart asked whether there was a water source in the garage. B. Larsen said no and pointed to a few other water sources around the house.

Bridenhagen likes the idea of having chickens. The Board of Appeals does not set the precedence. It gives us a little bit of leeway. However, it is a difficult situation. It is a good size structure. M. Larsen commented that the footprint was selected based on the guidelines provided online making sure the chickens have sufficient space to be healthy and happy.

Bridenhagen asked how long they foresee this raising chicken experiment and fun family thing happening for. B. Larsen said anywhere from 2 to 18 years. McMurtry pointed out that the variance sticks with the property even if they sell the chickens tomorrow. Hart said that the conditions could be imposed on variance. It would say that within the reasonable time when they stop raising chickens, the chicken coop must come down. Bridenhagen noted that it is a structure that could morph into a different type of structure in that amount of time. B. Larsen suggested that it could be noted that the structure could only be used as a chicken coop.

Bridenhagen asked what they needed to do to be compliant. Bristol stated that to be compliant the chicken coop must be placed 10 ft from the lot line and there is no setback from the house.

McMurtry thinks that the structure is too big. The size of the chicken coop is personal convenience, not a hardship. Glenn noted that the Board appreciates that they were trying to do the right thing without realizing what they were doing. However, not knowing is not a reason to not follow the zoning code. They have over an acre and a half of the property to build the chicken coop.

Hart concluded that he hopes the applicant continues to raise chickens even if the variance is denied. It sounds like a noble undertaking, and he commends them for doing it. Hart believes that the Board can grant the variance that is conditional on it being a temporary structure that will only be there as long as it is being used for chickens and never expand into some other use and become a permanent structure. The shed is already non-compliant and blocks the view of the coop to a significant extent. It would be unnecessary hardship to make them comply with the ordinance, given the purpose of the ordinance in this case. The variance is not based on their personal situation but on the condition of the land. It is a heavily wooded area where development will be difficult with no water nearby. Hart believes this variance is not contrary to the public interest.

Bristol read in the record that the zoning variance can be temporary in Wisconsin if the variance is conditioned on the nature of the use being temporary with the final amount of time. An example is construction trailers. McMurtry asked who would police this. A small portable chicken nest could be used temporarily. The proposed is a more permanent structure.

Glenn believes it is personally created hardship. The hardship is not due to the condition of the property. There is over an acre and a half of the land. Glenn realizes it might be more convenient, but inconvenience does not equal hardship. There are other options available to this applicant.

Krist believes that the applicant should make his project compliant rather than getting the variance.

Findings of Facts: Separate form included.

Public Hearing Closed by Karen McMurtry.

Conclusions of Law:

Unnecessary Hardship: It is not impossible for the family to raise chickens without this variance. It is just not as convenient/desirable as it would be otherwise. They have the land to build the chicken coop and there is a way to make this structure compliant even in the present location.

Unique Physical Property Limitations: There is a way to make it compliant as there is no shortage of land.

No Harm to Public Interest: This improvement is not harmful to anyone.

Glenn moved, McMurtry seconded to deny the requested 5' variance from the 10' side yard setback minimum standard of the Ephraim code of ordinances as presented, Glenn aye, Krist aye, Bridenhagen aye, McMurtry aye, Hart nay and the motion carried 4 to 1.

8. Leslie & Roy Harsch – 9931 Water St

a) Variance from 15' side yard setback standard

b) Variance to allow footprint addition in Protected Waterfront District

Public Hearing opened by Karen McMurtry. The notice was read into the record. This is case number 159, notices were sent out on August 8, 2024, and the hearing date is August 22, 2024, to hear and transcribe testimony both for and against, written and verbal. Public Hearing on zoning appeal application on property #121-01-24312723B1, variance from 15' side yard setback standard of Ephraim Zoning Code. Variance from footprint increase standard in Protected Waterfront (PW) district of Ephraim Zoning Code.

The property is zoned Protected Waterfront. The proposal is 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. The proposal calls for a 14' variance from the 15' side yard setback, placing it 1 ft from the property line. This project came before the Board of Appeals last fall, a decision at that time was tabled for more information, this is a newly posted hearing with additional information provided by the applicant. Construction on the project began without a permit and stop work orders were given at the time.

Chair McMurtry asked the committee members if they inspected the site. Some of the committee members knew the property in question, some passed by and visually inspected the property in question, and some used the pictures provided.

Statement by the Applicant

Roy Harsch explained that the unnecessary hardship is present because of the location of our existing house at 9931 Water Street with respect to the fifteen feet side yard setback from the property line with the adjacent Munn property at 9929 Water Street. By way of background, the present cottage was originally built by my wife's family in 1920 as a boat house. The Vail family at that time had built the original house on the adjacent property at 9933 Water Street and the original house up the hill at 3024 German Road. As was the common practice at that time, all of these Vail houses were built without kitchens because summer residents took their meals at the various hotels located throughout the Village. These houses were built prior to the enactment of zoning restrictions and building codes by the Village of Ephraim. As commonly occurred throughout the Village of Ephraim, the Vail family remodeled these

three houses to build kitchens. Their cottage was created when the original boat house was remodeled in 1940 to include a kitchen, bathroom, two bedrooms, and screened porch. The cottage footprint has remained the same footprint for the past 84 years. When the Village of Ephraim enacted their zoning restrictions, the Vail houses at both 9931 and 9933 were nonconforming with respect to both the front yard setback requirement of 30 feet and the side yard setback of 15 feet. Harsch and his wife purchased a half interest in the 9931 Water Street cottage in 1988 from the two members of the Vail family who also owned the 9933 Water Street house. Leslie's father owned the other half interest. In 2015 they obtained ownership of his half interest from her mother following the death of her father. Vail family members have owned both the 9931 Water Street and the 3024 German Road houses for more than 100 years.

In 1940 the existing kitchen at 9931 Water Street was constructed in a very small 7 by 10 feet space. It is very cramped and is impossible to have more than two people in the kitchen when cooking or serving. Because of the very small space between the stove and the opposite cabinet and refrigerator, it is impossible to open the refrigerator door while someone is cooking. This 21-inch space precludes standing in front of the stove and opening the oven door. When putting something into the oven or removing it, you must stand by the side of the stove and open the door. This is very difficult to do for anyone and is increasingly harder for both Leslie and Roy. It also is not a safe way to cook. There have been a few times that hot pans have been dropped, the contents spilled, and people burned.

Leslie and Roy are requesting a variance to allow us to obtain a building permit to construct an 80-inch by 90-inch or 6-foot 8-inch by 7 feet 6-inch addition to the kitchen. This addition would occupy the space inside the rectangle formed by the extension of the west side of the cottage out to the extension of the north wall of the existing screened in porch. The existing house, as it was originally constructed and expanded, was built at an angle very close to the original property line dividing 9931 and 9929. The existing cottage's southwest corner is 8 feet from the property line, the existing northwest corner is 1.3 feet from the existing property line and the corner of the existing screened porch is 10 1/2 feet. Therefore, the cottage's existing west wall is currently nonconforming with the present 15-foot setback requirement. Because the new northwest corner of the proposed addition wall would extend to the existing property line, they reached an agreement with Mr. Tom Munn to change their respective property boundaries. They obtained ownership from Mr. Munn of a small triangle starting just before the point opposite the existing northwest corner of the existing cottage extending 7.37 feet to a point then back 3.16 feet to the existing property line then returning 10.1 feet to the beginning. This triangle is shown on the attached Site Map prepared by Stantec. This Site Map also shows the identical triangle that we transferred to Mr. Munn that starts at our common highwater mark. Given these changes the kitchen addition will not be as close to the property line as the existing northwest corner of our cottage is now. A variance from the 15 feet side yard setback is requested to allow for the issuance of a building permit for the construction of the kitchen addition. In addition, a variance is also needed from the restriction prohibiting increases in the footprint of the cottage because of the restriction in the Public Waters zoning rules. Exhibit B was presented to show the 15 feet side yard setback on the existing survey and the Site Map.

Compliance with the terms of the ordinance is prevented by the following unique feature of this property because the location of the house as originally built and subsequently remodeled in 1940 was very close to the property line. It has been in nonconformance since the adoption of the Village of Ephraim zoning requirements which requires a 15 feet side yard setback. The entire area of the present kitchen is in non-conformance with the setback. Given the original

construction as a boat house over a hundred years ago and the manner it was expanded 84 years ago, there is no feasible alternative to move the kitchen within the cottage or to construct an addition to enlarge the existing kitchen.

The applicant believes that the variance will not negatively affect anyone's interest, safety, or welfare because the cottage has conformed to all the Village of Ephriam's suggested design standards as set forth in the Applicant Design Checklist and the proposed addition will also conform. It is and will remain a traditional cottage that has cedar siding that is painted white, a green gabled roof, and continues to maintain its present vegetation and topography. They made a significant effort to construct their shoreline protection in conjunction with their adjacent neighbors to provide a pleasing view out to the bay and a traditional view from the water. The proposed addition will not significantly change the character of its view from the water and will be only minimally visible from the road with no change in character. The manner of the original placement of the buildings close to the existing property boundaries on 9931 and 9933 by the Vails afforded the public-wide expanse of a view of the bay between the two houses which remains today. The shoreline protection they implemented at their cottage maintains this public view and the proposed addition does not impact this view in any manner. The excavation for the proposed addition, the removal of a number of stumps and the concrete footing, concrete floor, and stone foundation will allow them to correct a water problem that has existed for some time. Rainwater from their roof and from the two downspouts from the roof of the house on 9929 Water Street has contributed to ponding in the corner area between the existing stone foundation of the screen porch and the existing kitchen. This has caused some damage to the foundation and has contributed to the wetness of crawl space below the house which can lead to rotting of the support members. They believe that the concrete footing and floor will tie the existing stone foundation together, contributing to its longevity. Along with the thick foundation, it will provide a barrier for the rainwater that will direct it to the proposed gravel French drains that will allow it to be absorbed into the ground or be diverted downgrade through the existing landscaped bed to the stone drains they installed as part of the shoreline protection that they installed jointly with 9929 Water Street. Exhibit C was presented and showed an aerial view of their house, showing the location of the area that the addition will occupy, the existing landscaped area that straddles the property line, and the common rock drainage area.

In the 1940 addition, the rectangle area where the new kitchen area will be located was not a vacant area. The screened porch, as originally built, had a second door that had wooden steps down to a wooden landing area located below the two kitchen windows. An outside cold-water shower was included on the side of the west window. The shower had a flagstone area that extended from the wooden landing past the corner of the house.

The grant of the requested variance will not have an adverse effect on anyone. While the grant of the variance will allow a building permit to be issued for our kitchen addition that is closer to the 9929 Water Street house, the owner has expressed his support for this variance and the proposed project and joint plans to address the drainage of rainwater. The proposed addition will not affect the public's view of the bay, does not adversely affect the style of the cottage, and has not generated any adverse comments or concerns. The two adjacent landowners submitted written comments and sat through the entire first hearing after speaking to the Board in support of the requested variance. The owners of the two properties next to the adjacent properties submitted written comments in support of the requested relief.

Granting the requested variance will allow them to obtain a building permit that will allow them to build a functioning and safe kitchen, which they very much need as they get older. It will

also allow them to address an ongoing water and drainage issue that has caused damage to their cottage. They will be able to continue to use this cottage that basically has remained unchanged for the past eighty- four years and was originally built by family members in 1920. They believe that the granting of a variance that does not impact the public and allows them to continue to maintain and safely enjoy this cottage is consistent with the Village of Ephraim's intent when it adopted the current zoning requirements. It was not the intent of the Village of Ephraim that historic cottages in the Protected Waters areas be torn down, and new modern buildings constructed in their place.

Reading of the Staff Report

The subject property, parcel #121-01-24312723B1 is owned by Leslie & Roy Harsch and is located at 9931 Water Street. The property is zoned Protected Waterfront and is used as a single-family residence.

Bristol in his notes stated that the proposal is 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 to 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 the Munns apply for and be granted at future hearing for variance themselves. Moving a property line via the triangle property swap will make Harsch's property slightly more conforming and Munns' property slightly less conforming.

A regular zoning permit cannot be issued because the project does not comply with the 15' side yard setback of the Ephraim Code of Ordinances and because it adds a footprint to an existing structure that is not permitted, as proposed, under the Ephraim Code of Ordinances.

The applicant is requesting:

- A 14' Variance from the 15' side yard setback standard of the Ephraim Code of Ordinances.
- A Variance to allow the addition of footprint in the PW district from the Ephraim code of ordinances.

Correspondence:

Bristol reported that there was one piece of correspondence received concerning this matter.

Kevin and Wanda McDonald, 9935 Water Street, owners of the adjacent property, support Leslie and Roy Harsch's request for a variance and have no reservations or concerns. Their comments on this case, which were presented to the Board of Appeals at a prior public hearing have not changed. They remain supportive of their request for the variance due to hardship.

As recommended by the Board of Appeals in the last meeting, the Harschs made us aware they hired a professional designer/builder to evaluate the layout options for the existing space. In addition, they made a property trade with Mr. Munn to reduce the Board's concern about the setback. Both of these actions demonstrate Harsch's efforts to comply as much as reasonably possible under the circumstances.

We recognize that setting the precedent is of great concern for the Board, and we appreciate that. We also believe addressing each request, albeit some more challenging than others, should be decided on a case-by-case basis, based on each request's merit. They know this is not an easy process, however, objecting to this request based on precedent setting alone seems like the easy button. They are not aware if there were other criteria considered during the evaluation and if that information has been shared with Harsch. They hope the Board is deciding their appeal based on their specific real need and not based on fear of what could be.

In this particular appeal, it's a home located in the historic PWD where buildable space is limited for most properties along the shorefront, it's a home built in the early 1900's before kitchens in these homes existed, the space in question is a retro fitted kitchen which was formerly a closet or store room, there is a visible hazard present, and lastly this is a needs-based request, not a want-based request.

In the last meeting, it was expressed that the Board should be cautious about setting a precedent because they don't want Ephraim to become like Sister Bay. With all due respect, comparing Ephraim's review and approval process to what Sister Bay has become is so disingenuous and not even comparable. Ephraim's history speaks for itself and also its future. They don't see Sister Bay in it. That is why they love and live in Ephraim.

Roy Harsch commented that the actual size is 6 feet 8 inches by 7 feet 6 inches. Harsch also corrected Wanda McDonald's statement that he hired Doug Farah, the professional designer/builder. Harsch did not hire a professional designer/builder. Doug Farah is a close friend and former general contractor. Harsch wanted to make that clear.

It was confirmed that there was no ex-parte communication.

Witness or Visitor Statements:

Doug Farah, owns a home in Baileys Harbor. He used to be a general contractor for 37 years, primarily in the new home construction business and some remodeling. His career included designing at least 150 kitchens, including the kitchen for Roy and Leslie Harsch which was 50 years ago. They remained friends all these years and he continues giving them advice even after retirement. He got to know previous owners and Doug and his wife were invited to dinners many times. He was always amazed at their ability in their advanced years to maneuver the cramped and unsafe space of the appliances, especially the oven. Even back then they asked what could be done to improve the safety and function of the kitchen space. The same unsafe space exists today. Roy Harsch asked the same question. Given the width of the space of only 6 ft and the limited size of the family dining room, he advised them to continue the existing galley-style kitchen. The wall separating the kitchen from the family dining room is a load-bearing wall supporting the entire roof structure on the south side of the house. The only logical way forward was to add space outside the confines of the original structure, filling in the space within the screened-in porch and the existing east-west wall on the south side of the house. This is the best option to make the space more functional and safer as they are also getting older.

Glenn wanted to see other options after last year's meeting, maybe hiring an expert in kitchen design, and nothing is presented. Is the proposed kitchen space the only solution? Or is it just the most efficient option? Farah noted that between the rooms there is a very heavy-duty load-bearing wall. The roofline will have to be changed. They are not going to be chopping into that wall to expand the kitchen into the living space/dining area, which is what some people are suggesting. It is a lot to do. It is a small cottage. Farah had no idea about variance when designing this space.

Glenn asked again whether there had been any attempt since the last meeting to re-design the kitchen without taking down the load-bearing wall. That is what the Board of Appeals asked for at the last meeting. There was nothing presented.

Harsch added that the wall in question cannot be touched as it supports the original roof, and the attic above the house, and a new roof. To physically do that, with having an undergrad and master's in engineering, as well as being a professional engineer in the state of Illinois, without totally changing the roofline. The kitchen cannot be physically moved and cannot be expanded into the living space. I brought the professional person Doug Farah into this conversation, and he addressed that.

Bridenhagen noted that the applicant was served a cease-and-desist letter which was to stop building. The applicant did not stop building. He put on shingles, sheeting, window, and trim boards with nails. He worked pretty hard on the foundation and that took some time. Did the Ephraim building inspector inspect the foundation? Harsh said no. Bridenhagen noted that it is not a state-approved plan by the Village inspector, which is a violation. Harsch said he apologized at the last meeting for starting without the building permit. Bridenhagen asked whether the applicant knew he needed the building permit. Harsch said yes and that he cannot say he did not. Harsch said that he asked the building administrator – Bristol after the last meeting if he could button it up so they have no structural problem with the existing house. They used Tyvek, two trims, and the temporary window from a recycled place in Sturgeon Bay to help with the wind and Ephraim winter. It will all have to be taken down and re-done if the variance is approved. Bridenhagen asked whether Tom Munn knew that agreeing with the swap made his property less compliant. Harsch said that he did not realize that but noted that it was already non-compliant. Bristol added that he suggested Harsch not do the triangle swap unless the variance passes. It was not officially recorded, Harsch noted.

Bridenhagen went on to say that owners of the Protected Waterfront (PW) District actively participated in the process of drawing an ordinance. There is no expansion allowed in the PW District.

Bridenhagen does not believe that the load-bearing wall could not be supported. If you could not there would not be an existing opening. It can be re-supported. Bridenhagen does not find the hardship in this application.

Tom Munns, 9929 Water Street, adjacent property neighbor, has no problem and absolutely supports this project. The kitchen is too small, and it is hard to remove anything from the oven. It is downright dangerous. This will allow them the space to solve those things.

Paul Jones, said that he spent a lot of time on architectural and engineering considerations with Roy Harsch. The home was built as a boat house by Malcolm Vail, the person who started the Ephraim Yacht Club. The cottage is a historic district relic. The area that is being expanded had an influx of surface water over 100 years. The foundation was rotting. The new foundation was put up to prevent the water from coming in and destroying that part of the cottage. With 40 years plus of civil engineering applications behind him, he said that a significant rebuild of the foundation would be hugely expensive to correct without expansion. There will still be surface water coming in. This expansion solves an engineering problem. The property has the most natural-looking shorefront in the harbor. Everybody else just pumps concrete between the rocks. It looks like Miami Beach. It is disgusting. Jones said that he is sensitive to this issue. This harms nobody and solves an engineering problem. There is nothing else that can be done to reconfigure the kitchen. Unless someone has a viable plan as an alternative, the point is moot.

Bridenhagen asked whether expansion beyond the footprint of the building is allowed in the PW District. Bristol said that the Board of Appeals can vary anything within the zoning code. There are area variances and use variances. This is area variance because we are talking about dimensional standards. In two previous cases, the applicants were asking for some feet of relief. This case is a little different because it does not ask for a certain amount of relief; dimensionally there is no number; which does not mean it cannot be varied. The code says no expansion in PW. There is no certain amount of relief from a standard. The standard is no expansion. They are looking for the variance to do the opposite. The applicant is limited to what is already there, no expansion, unless there is a shed that was removed, or the attached garage pulled off to add that footprint.

Harsch clarified that the area was not vacant. There was a set of steps and a wooden landing at the bottom of those steps. There also was a plaque stone base in front of the outdoor shower. There were things in that area that were not shown in the survey. Harsch and others replaced those steps a few times. The freezing and thawing of the surface water had split the foundation by the window, and it was causing rot in the foundation. The 8 inches of concrete that were poured eliminated that concern and tied the existing foundation together. Harsch noted that it was wrong to do it without a permit. He noted that he apologized to the Board of Appeals and Village President at the last hearing. However, Harsch believes the kitchen expansion should have been done a long time ago and it was not. It is important to keep Ephraim Ephraim as the Village President noted at the last hearing. Harsch said the important thing to keep Ephraim Ephraim is keeping the uniqueness of all the existing old cottages and houses and not tearing them down and rebuilding them in the existing footprint to have a safe house. There were old historic cottages along HWY 42 that had been torn down and rebuilt in the exact same footprint, clearing every tree off the lot and grading the dirt off. Those are new structures, modern houses. The pointedness was lost. This expansion will keep Ephraim Ephraim.

Bridenhagen asked whether building the structure without the permit and being granted a variance would prevent anybody else from doing the same. There will be people building things all over the place and thinking it is better to ask for forgiveness than permission. Harsch noted that he is not asking for forgiveness, he is willing to pay the penalty. It is something that should have not occurred, but it allowed him to fix the issue with his foundation. That is why he did it. Harsch believes that the Board has to decide the variance based on the application and the evidence. The Board of Appeals is not approving the violation. Bridenhagen believes the applicant took advantage of the situation and put people in a position because he did follow the rules.

Findings of Facts: Separate from Included

Glenn stated that the applicant has a burden of proof. It is the applicant's job to bring the information to the Board to convince the Board that there is hardship. The Board tabled the variance and asked for more information at the last hearing. Glenn does not feel they got an adequate response in terms of what might be possible.

Hart emphasized for everyone that in order to become a member or alternate member of the Board of Appeals there is a fair amount of training they have to go through. One thing pointed out in those training courses is that the Board of Appeals is a quasi-judicial board that is supposed to function like a court and follow state law as well as an ordinance and act based on the evidence presented. The applicant has the burden of coming forward with evidence to show that they comply with the requirement for the variance. The applicant has to show that complying with the ordinance will produce unnecessary hardship due to conditions that are unique to the property, not the owner and that would not be contrary to the public interest. That is a tough showing. There is the issue of whether the applicant has shown unnecessary hardship as opposed to personal inconvenience which alone would not be enough. The cottage was originally designed without a kitchen, and one was put in in 1940. The kitchen has lots of things in it. There is a dishwasher and washing machine in that space. It is a usable kitchen. The applicant must show an inability to comply with the ordinance because of the quality of the land and not the owner of the land. In this case, the applicants bought a half interest in the cottage by 1988 which is more than 35 years ago, and they obtained the other half interest almost a decade ago. They were content with that kitchen for a long time. Hart understands that the applicants are getting older just like everyone else. However, the unnecessary hardship does not include the conditions that are personal to the owner of the land but only to the unusual condition of the property. Hart presented the case law of Snyder vs. Waukesha County Zoning Board from 1976 where the Wisconsin Supreme Court decided; *"It is not the uniqueness of the plight of the owner but uniqueness of the land causing the plight, which is the criterion"*. When it comes to the public interest, each variance application stands on its own, but the fact of the matter is that we do not know how many other people would like a larger kitchen or a bigger footprint in the PW District. Wisconsin Law is very clear. The Zoning Board can consider the cumulative impact of similar requests that might be made in a neighborhood. On the one hand, it is case-by-case, on the other hand, the possible reaction of other people with similar personal situations must be considered. Hart concluded that he would have to vote no on this matter.

McMurtry agreed that a lot of the evidence was personal and not the condition of the property. The unnecessary hardship was not proven.

Krist noted that he agreed with all the comments and that he would have to vote no on this case.

Public Hearing Closed by Karen McMurtry.**Conclusions of Law: Separate form included.**

Unnecessary Hardship: The hardship is caused by personal inconvenience rather than the property itself.

Unique Physical Property Limitations: The house has a working/usable kitchen that has been there for a long time.

No Harm to Public Interest: 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.

McMurtry moved, Glenn seconded to deny the requested variance from the 15' side yard setback standard of the Ephraim Code of ordinances and variance to allow the addition of footprint in the PW district from the Ephraim Code of Ordinances as presented, all ayes and the motion carried.

9. Adjournment

McMurtry moved, Krist seconded to adjourn the Board of Appeals meeting at 7:00 PM, all ayes and the motion carried.

Recorded by,

Andrea Collak - Clerk/Treasurer

DRAFT