

## **Town of Clear Lake - Board of Zoning Appeals Meeting Minutes - August 16, 2010**

Board of Zoning Appeals Chairman Ron Kummer called the meeting to order and read the rules of procedure aloud for the public's benefit. Roll call was taken and introductions were made. The following members of the Board were present.

Ron Kummer, Chairman  
Jon Fitzenrider  
Chris Folland  
Gerald McArdle  
Eric Tyler

Also present:

Neal Blythe, Town Attorney  
Amy Schweitzer, Zoning Administrator and Recorder of the minutes of the meeting  
Eight people signed the meeting attendance sheet (sign in sheet attached)

Chairman Kummer asked for variance petition 2010-05 to be presented. Mrs. Erin Culler of 634 Lake Drive, Clear Lake, came forward, introduced herself, and thanked the Board for taking the time to hear their request. She stated that she and her husband, Ben, had lived in Clear Lake for six (6) years, and when they purchased their home, they thought a 1,450 square foot home would be sufficient to meet their needs. And, it was enough until they had two (2) children. Mrs. Culler stated she was appealing to the Board's fairness.

She stated they originally considered remodeling the current cottage that is seventy (70) years old. However, it is not even twenty-five (25) feet off of Lake Drive, and restricted by electrical lines.

Mrs. Culler stated they were requesting two (2) variances: the established building setback line as the lake yard setback and the horizontally protected viewshed. Culler stated that both adjacent neighbors support the Board granting the variances because it will allow them to build closer to the lakefront when they decide to rebuild. Also, Mrs. Culler stated there was no opposition from surrounding property owners. She stated the proposed project would increase adjacent neighbor's land value.

Mrs. Culler stated that if the variance was denied, they would be forced to sell the property. She concluded by stating they wished to build a larger house to more fully utilize the property.

Chairman Kummer stated that the horizontally protected viewshed was one of the most important regulations because it protected adjacent neighbors' view of the lake. Mr. Lynn DeLagrange introduced himself as the builder and stated that he agreed with the importance of the viewshed regulations, but believed in this situation it could backfire. He explained that there is an inherent unfairness in the Culler's particular situation. Neighbors to the north would be able to utilize the thirty (30) foot lake yard setback because the property located two away to the

north is adjacent to the public beach where an established building setback line does not exist. Neighbors on the south side would also be able to build closer to the lake because of the established building setback line that exists two properties south of them. This situation would leave the Culler's back in a hole.

Mr. Fitzenrider asked if the existing house would become the drive way. Mrs. Culler concurred. Mr. Fitzenrider asked about an administrative subdivision process, and Mrs. Culler agreed that all three (3) of their lots would be legally combined through that process before construction began.

Mr. McArdle stated the viewshed law and the portion describing the setback are really for the benefit of and to protect the neighbors. No one else is affected by these regulations, and consequently, if the neighbors do not object, granting this variance makes sense to him.

Chairman Kummer asked for public comments for or against the variance requests. Ken Willis, 638 Lake Drive, introduced himself as a neighbor located two (2) lots to the south. Mr. Willis stated the Culler's are good neighbors, know the Clear Lake protocol, and he has no objections whatsoever to the granting of the variances. No other members of the public spoke for or against the variance petition. Kummer closed the public comment portion of the hearing.

Chairman Kummer asked about the age of the existing cottage. Mrs. Culler stated it was built in the 1940s and was the old laundromat. She believes people lived in the second story. Chairman Kummer brought to the Board's attention a letter signed by both adjacent property owners and Mr. Willis. The letter fully supports the granting of both variances and the construction of the new house.

Board member Eric Tyler asked Mr. DeLagrange about lead based paint remediation. Mr. DeLagrange stated that rule does not apply on demolition projects, only remodels.

Chairman Kummer took a tentative vote before requesting Town Attorney Neal Blythe begin working through the findings of fact. Kummer shared the certified mail green cards indicating proper notice was provided to adjacent property owners and confirmation from the Clerk-Treasurer that public notice of the variance hearing was sent on August 3, 2010 and published in the Herald Republican on August 6, 2010.

Mr. Blythe led the Board through the following findings of fact:

*For variance case #2010-05A – Request for relief from Horizontally Protected Viewshed requirement.*

- Finding A1: Legal notice of the petition has been provided in accordance with applicable Indiana Code Section and Notice has been made to appropriate land owners. All five (5) members of the Board of Zoning Appeals unanimously agreed.
- Finding A2: The variance from the horizontally protected viewshed requirement will not be injurious to the public health, safety, morals or general welfare of the community, as new home will serve to enhance the subject property and make it more functional for the homeowners. The neighboring properties will be enhanced and are supportive of the project. All five (5) members of the Board of Zoning Appeals unanimously agreed.

- Finding A3: The use of the area adjacent to the property will not be affected by the variance as there will be no impact to the use. The value of the nearby properties will not be affected, as the variance will allow a more attractive and valuable home and will not detract from property values. All five (5) members of the Board of Zoning Appeals unanimously agreed.
- Finding A4: The strict application of the terms of the Clear Lake Zoning Regulations will cause practical difficulty because the proposed new structure will not be able to be built given the current zoning regulations, which will result in a structure that cannot accommodate petitioner's growing family. All five (5) members of the Board of Zoning Appeals unanimously agreed.

There was discussion on the condition of recording the granting of the variance. All five (5) members of the Board of Zoning Appeals unanimously agreed to approve variance 2010-5A - Variance for Relief from Horizontally Protected Viewshed requirement with the condition that certification of the granting of the variance be created and recorded in the Office of the Steuben County Recorder.

*For variance case #2010-05B – Request for relief from Established Building Setback line requirement.*

- Finding B1: Legal notice of the petition has been provided in accordance with applicable Indiana Code Section and Notice has been made to appropriate land owners. All five (5) members of the Board of Zoning Appeals unanimously agreed.
- Finding B2: The variance from the established building setback line will not be injurious to the public health, safety, morals or general welfare of the community as new structure in the proposed location will add value to the neighborhood and the property values. All five (5) members of the Board of Zoning Appeals unanimously agreed.
- Finding B3: The use of the area adjacent to the property will not be affected by the variance as there will be no impact to the use. The value of the nearby properties will not be negatively affected, as the variance will allow for a larger and more valuable structure which will increase property values. All five (5) members of the Board of Zoning Appeals unanimously agreed.
- Finding B4: The strict application of the terms of the Clear Lake Zoning Regulations will cause practical difficulty because the proposed structure will not be able to be constructed in a manner that will allow the full use of petitioners' real estate. All five (5) members of the Board of Zoning Appeals unanimously agreed.

There was discussion on recording a certification granting the variance. All five (5) members of the Board of Zoning Appeals unanimously agreed to approve variance 2010-5B - Variance for Relief from Established Building Setback Line with the condition that certification of the granting of the variance be created and recorded in the Office of the Steuben County Recorder.

Chairman Kummer stated there was no other new business, and the minutes of the previous meeting are usually approved under old business, but the minutes from the June 2010 meeting were not available. As a result, the minutes of the June meeting need to be approved when the Board meets in October.

Hearing no other business, Chairman Kummer requested a motion to adjourn. Mr. Folland made a motion to adjourn the August meeting of the Board of Zoning Appeals. Mr. Tyler seconded the motion. Motion carried; meeting adjourned.

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Chris Folland, Secretary

Attachments: Meeting Sign In Sheet

Aug 16, 2010 BZA Meeting

Name

Address

MARY JO FITZGERALD

332

~~LYNN DELANEY~~

Erin Culler

634

Ben Culler

634

~~KEVIN + JEANNE WILLIS~~

638 W. DR.

Bruce Spangler

222

Amy Culler

904