

Town of Clear Lake - Board of Zoning Appeals Meeting Minutes – October 18, 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
Bonnie Brown, Alternate
Gerald McArdle
Eric Tyler

Also present:

Neal Blythe, Town Attorney
Amy Schweitzer, Zoning Administrator and Recorder of the minutes of the meeting
Six (6) people signed the sign-in sheet

Chairman Kummer asked for variance petition #2010-06 to be presented.

Mr. Bruce Etter of Millgrove Landscaping explained that Doug and Patricia Miller live next to the public beach and are requesting to install a new fence in the exact same location as the current fence. The proposed new fence will be two-feet taller than the existing fence. The new fence will be white cedar. Etter explained that the posts and rails that support the fence will be on the Miller's side. The reason for the increase in height is for privacy. The elevation on the beach side is much higher as illustrated by a set of photographs Mrs. Miller submitted. (Mrs. Miller had one (1) set of photographs for each member of the Board).

Mr. Etter reported that the Steuben County Commissioners, owners of the public beach, verbally gave their blessing for the fence. Chairman Kummer confirmed that he received a letter from the County Commissioners.

Board of Zoning Appeals member Mr. Tyler asked Mr. Miller about strict application of the Town's regulations. Mr. Miller stated that the difference in elevation between his property and the public beach necessitate the additional fence height. Using the required height allows people on the public beach property to see right over the fence. With the additional two-feet in height, users of the public beach would not be able to see nearly as much of their property. Mr. Miller concluded that the only reason this is an issue is because their property is immediately adjacent to the public beach.

Chairman Kummer asked Mrs. Schweitzer about the buffer requirements in the Unified Development Ordinance (UDO). Mr. McArdle stated that if the public beach is improved, the improvements will likely include a landscaped buffer area. There was some discussion on future improvements to the public beach, with the conclusion that improvements were only being "discussed" by the County at this point.

Mr. Tyler commented that he would like to hear the property owner ask for the variance. Mr. Miller stated that he and his wife were requesting a variance to replace their existing fence and increase the fence height by two-feet.

Board of Zoning Appeals Member Ms. Brown asked about the exact location of the fence and a line on the plot plan. Brown commented the fence would be very nice, but questioned using dense shrubbery instead of the fence. Mrs. Miller stated that people come through landscaping. Miller commented that patrons of the public beach are constantly getting on their dock including unsupervised toddlers. Mrs. Tina Etter of Millgrove Landscaping mentioned that the Miller's already have plantings on their side and about the only type of plantings that people will not "slip through" are those with thorns.

Board Member Mr. McArdle stated that the true solution probably is a fence, and the land on the public beach side is a higher elevation. A fence that is eight-feet high on the Miller's side will look considerably smaller on the public beach side. Ms. Brown asked about painting the fence, and the Miller's confirmed that the fence would be painted, and that they would be responsible for painting and maintaining both sides of the fence.

Chairman Kummer took a tentative vote. Mr. Tyler requested more discussion. There was additional discussion on the change in elevation between the public beach property and the Miller's property and landscape plantings.

Chairman Kummer read aloud a letter dated September 20, 2010 from the Steuben County Commissioners. The Commissioners have no objection to the Miller's proposed fence on the property line shared by the County and the Miller's.

Chairman Kummer led the Board through the following findings of fact:

For variance case #2010-06A – Section 5.23.C.3 request for relief from fences not being permitted in lake yards.

- **Finding A1:** Legal notice of the petition has been provided to the Herald Republican Newspaper on October 4, 2010 and published on October 8, 2010. Notice has been made to appropriate land owners as shown by the return receipts that are in the Town's possession. All four (4) members of the Board unanimously agreed.
- **Finding A2:** The approval of the variance allowing the petitioner to replace the fence in the lake yard will not be injurious to the public health, safety, morals and general welfare of the community because the adjacent property is zoned Neighborhood Commercial and the current Unified Development Ordinance considers the two districts (LR and NC) "conflicting" thus requiring a buffer yard between the two districts. This fence is the petitioner's way of creating such a buffer. All four (4) members of the Board unanimously agreed.
- **Finding A3:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the fence already exists. It is being upgraded to look better, require less maintenance, and function better. All four (4) members of the Board unanimously agreed.
- **Findings A4:** The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the petitioner's property because the prohibition of fences

in the lake yard is intended for areas that are residential which is the case in the vast majority of lake front property. The petitioner's property is one of the few lakefront lots adjacent to a lakefront lot that is a non-residential use and a non-residential zoning district. All four (4) members of the Board unanimously agreed.

All four (4) members unanimously agreed to approve *variance 2010-06A Request for relief from fences not being permitted in lake yards*, without conditions.

For variance case #2010-06B – Section 5.23.D Request for relief from fences in the front yard, street yard, side yard, or rear yard not exceeding four (4) feet in height

- **Finding B1:** Legal notice of the petition has been provided to the Herald Republican Newspaper on October 4, 2010 and published on October 8, 2010. Notice has been made to appropriate land owners as shown by the return receipts that are in the Town's possession. All four (4) members of the Board unanimously agreed.
- **Finding B2:** The approval of the variance allowing the petitioner to replace the four-foot high fence in the side and street yards with a six-foot high fence will not be injurious to the public health, safety, morals and general welfare of the community because the adjacent property is zoned Neighborhood Commercial and the current Unified Development Ordinance considers the two districts (LR and NC) "conflicting" thus requiring a buffer yard between the two districts. The proposed six-foot high fence creates an appropriate buffer between the two districts. All four (4) members of the Board unanimously agreed.
- **Finding B3:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the fence already exists, and the change from a four-foot high fence to a six-foot high fence is not significant enough to impact the use and property value of the area. Additionally, the six-foot high fence will be new and look better than the existing fence. All four (4) members of the Board unanimously agreed.
- **Finding B4:** The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the petitioner's property because the four-foot fence height required by the ordinance does not provide adequate privacy for the petitioners from the adjacent Public Beach. All four (4) members of the Board unanimously agreed.

All four (4) members unanimously agreed to approve *variance 2010-06B Request for relief from fences in the front yard, street yard, side yard, or rear yard not exceeding four (4) feet in height*, without conditions.

Chairman Kummer signed the findings of fact and concluded the variance hearing.

Chairman Kummer asked the Board to review the minutes from the June 21, 2010 meeting. Mr. Tyler made a motion to approve the minutes as presented. Ms. Brown seconded the motion. Motion carried with four (4) votes in favor and zero (0) against. Kummer asked the Board to review the minutes of the August 16, 2010 meeting. Mr. Tyler made a motion to approve the minutes as presented. Mr. McArdle seconded the motion. Motion carried with four (4) votes in favor and zero (0) against.

Mr. Blythe reported that the Board of Zoning Appeals was being asked to ratify the dismissal of the fence case filed by the Hoagland's. Blythe gave several reasons for ratifying the dismissal of the case. Mr. McArdle asked if this was the sewer case, and Mr. Blythe confirmed that the sewer

case as not being dismissed, and that this case involved a fence where Mr. Hoagland was appealing a decision of the BZA. The fence has since been removed. After additional discussion, Mr. McArdle made a motion that the Board of Zoning Appeals ratify the dismissal of the fence lawsuit files by the Hoagland, subject to the Hoagland's dismissal of the same case. Mr. Tyler seconded the motion. Motion carried with four (4) votes in favor and zero (0) against.

Hearing no other business, Chairman Kummer entertained a motion to adjourn. Mr. McArdle made a motion to adjourn the meeting. Mr. Tyler seconded the motion. Motion carried with all voting in favor; meeting adjourned.

Chris Folland, Secretary