

Town of Clear Lake - Board of Zoning Appeals Meeting Minutes – February 21, 2011

Board of Zoning Appeals Chairman Ron Kummer called the meeting to order and opened the public hearing portion of the meeting. Chairman Kummer announced that due to severe weather, the Board of Zoning Appeals meeting and the public hearing concerning case #2011-01, variance from development standards request made by John Nichols of 1000 Lake Drive, Clear Lake, would be continued. The meeting and public hearing would be resumed on Wednesday, February 23, 2011 at 7 PM in the Clear Lake Town Hall at 5950 Gecowets Drive, Clear Lake, Fremont, Indiana.

Christopher D. Folland, Secretary

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Board of Zoning Appeals Chairman Ron Kummer opened the continuation of the February 21, 2011 meeting at 7:00 PM. Introductions were made and the following members of the Board were present:

Ron Kummer, Chairman
Bonnie Brown
Christopher D. Folland
Dave Harris
Eric Tyler

Also present:

Amy Schweitzer, Zoning Administrator and Recorder of the minutes of the meeting
One (1) person signed the sign-in sheet

Chairman Kummer briefly reviewed the Board of Zoning Appeals' procedures, and asked for variance petition #2011-01, a variance from development standards, to be presented.

Mr. John Nichols, of 1000 Lake Drive, introduced himself and began by providing a large set of plans to the Board. Nichols confirmed that his existing deck was considered an elevated deck, and that it projects sixteen (16) feet out from the face of the cottage. Nichols explained in detail the existing deck and how the proposed new deck differed from the existing deck. In doing so, Nichols confirmed that the new deck would not be any closer to the northeast property line (Newcomb side) than it is today. He stated the new deck would be two feet eight inches (2'8") closer to the lake than it currently is, but the face of the attached structure would be twenty-eight (28) feet from the lake.

Chairman Kummer explained what makes Mr. Nichols' situation unique is the change in elevation from the cottage to the lake. Nichols confirmed that there were three (3) tiers of landscaping between the existing deck and the lake. He stated that annual freezing and thawing is causing the rocks to slide down the hill and erode the landscaped tiers. This project allows him to get rid of much of that landscaping and the maintenance headache that comes along with it. Mr. Nichols explained that the structure under the deck would have a concrete floor and be trimmed to match the rest of the house. He stated that the view from adjacent properties will not be altered because the area under the existing deck has always been enclosed.

Nichols stated that he would agree to lower the elevation of the deck one (1) additional foot. This would make the deck two (2) steps down from the cottage resulting in a better view from inside the cottage and less height to make up at grade. Mr. Nichols would like to avoid installing handrails along the lower patio proposed as part of the project. Lowering the deck one (1) additional foot would make his deck lower than all of his adjacent neighbors.

Mr. Nichols confirmed that he had recently discussed with Mr. Newcomb, his neighbor to the northeast, concerns about an existing underground dog fence and the terraced rock wall that crosses the property line into Mr. Newcomb's property. Nichols stated that they aren't exactly sure how that will be handled, but he will make sure it all ties together.

Board member Bonnie Brown stated that she had recently run into Mrs. Gleckler the neighbor to the southwest. Mrs. Gleckler told Ms. Brown that they are okay with the proposed project on Mr. Nichols' property.

Nichols ended his presentation stating that he hoped to start the project in the spring and have it completed by Memorial Day.

Chairman Kummer asked the Board of Zoning Appeals for questions. Board member Bonnie Brown asked about the logistics of getting construction equipment to the project area. Mr. Nichols stated he planned to access the site through the northeast side yard (Newcomb's side). He stated he'd have to temporarily remove a small awning/deck on the side of the garage, but that he'd have approximately six (6) feet to access the site.

Ms. Brown asked about the landscaping involved in the project expressing concern about the quantity of impervious surface. Mr. Nichols responded by stating that he was under the fifty-three percent (53%) coverage ratio required by the Unified Development Ordinance. He stated that he liked the idea of using pavers – which are not entirely impervious – but had not completed enough research to commit to using pavers. Nichols also noted that all of the existing landscaping has a layer of plastic under it which means there is no water penetrating the ground presently. Ms. Brown asked if there was going to be gutter around the elevated deck. Mr. Nichols stated probably.

Ms. Brown asked about utilities in the enclosed area under the deck. Nichols stated he planned to have electricity for lighting and an exhaust fan. There would not be water, heat, or sewer. Nichols stated he might add a floor drain. Mr. Nichols was asked about a condition that would prohibit the space from ever being used as living space and prohibiting any utilities except electricity. Mr. Nichols said he would be fine with such a condition; he has no intention of using the enclosed area under the deck for living quarters. Nichols confirmed that there would not be any way to get directly from the enclosed area under the deck into the cottage. The double doors shown on the plan would be the only doors accessing the enclosed area, and a window/planter box would probably be added to the siding wall that is adjacent to the double doors.

Mr. Folland made a motion to open the public hearing portion of the meeting. Mr. Tyler seconded the motion. Chairman Kummer opened the public hearing and asked for comments from the audience. Hearing no comments, the public hearing portion of the meeting was closed.

There was additional discussion by the Board and Mr. Nichols on alternatives to improve drainage: drill holes in concrete, create trench drains around landscaping, and tie into existing downspout tile.

Board member Eric Tyler expressed concern about calling the enclosed area under the deck a “storage facility.” Board member Christopher Folland asked whether the enclosed area was an accessory structure or part of the primary structure. There was discussion about established building setback lines and accessory structures in the lake yard. Nichols explained his plan for construction involved digging down to the bottom of the cottage footer, and then creating a ledge at that level so as not to disturb that footer. Mr. Nichols added that if he needed to physically attach the enclosed area to the footers of the cottage, he could do that, but it was not his initial plan.

Mr. Tyler expressed concern about the legal notice for the variance, stating that maybe the provision Mr. Nichols was requesting relief from was not accurately noted in that legal notice. Staff Amy Schweitzer stated that the legal notice adequately described the project even if the actual code identification number that is the source of the variance request may have changed. Schweitzer read the description of the project from the legal notice aloud “*the proposed project includes replacing the existing lake side deck with a new deck that contains a storage room under it. The proposed storage room, although located under the deck, projects into the required minimum lake yard setback,*” and stated that the project description has not changed. Even if it was a provision in Section 5 of the Unified Development Ordinance where the variance request was coming from, the description would be the same. Any member of the public that wanted to object would do so based on the description of the project, not the code provision specified. Additionally, Ms. Brown pointed out that Section 2.14 of the Unified Development Ordinance, which is what the legal notice specified, included all the provisions related to the Lake Residential District. Tyler and the Board concurred.

After some review of the Unified Development Ordinance, the Board determined the enclosed area under the deck met the definition of an “Attached Structure.” The Unified Development Ordinance defines an attached structure as “*a structure that is structurally connected to another structure by a foundation, wall, bridge, or roofline or appears to be connected. Carports, garages, porch awnings, and the lake are considered attached structures and must abide by all regulations pertaining to primary structures.*”

Chairman Kummer took preliminary poll to see if more discussion was desired by the Board. Ms. Brown stated she felt very strongly that Mr. Nichols should be required to use pavers. Mr. Folland stated that he did not believe using pavers so close to the lake was a wise choice. Folland suggested that if the Board believed runoff needed to be mitigated that they allow Mr. Nichols to decide how best to do this. Mr. Tyler confirmed that impervious concrete existed now.

Nichols stated he needed to conduct more research on pavers before agreeing to use them, and that he would consider using them on the patio that is at the bottom of the deck, but probably not the patio that abuts the seawall.

Hearing no other questions or comments, Chairman Kummer led the Board through following findings of fact:

For variance case #2011-01 – Section 2.14 request for relieve the minimum lake yard setback:

- **Finding 1:** Legal notice of the petition was provided to the Herald Republican Newspaper on February 7, 2011 and published on February 11, 2011. Notice has been made to appropriate land owners as shown by the stamped receipts from the US Post Office and the return receipts (green cards) that are in the Town's possession.
- **Finding 2:** The approval will not be injurious to the public health, safety, morals and general welfare of the community. The approval of the variance allowing the petitioner to replace the deck and construct an attached structure under the deck within the lake yard will not be injurious to the public health, safety, morals, and general welfare of the community because the attached structure will be tucked entirely under the deck, constructed with materials and in a manner that is complementary to the neighborhood, and provide a usable solution to maintaining the existing slope between the seawall and the existing residence. All five (5) members of the Board unanimously agreed.
- **Finding 3:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. 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 deck already exists. It is being upgraded to look better, require less maintenance, and function better. The attached structure under the deck will be integrated into the design of the deck and be constructed of quality materials. The proposed project will not impact viewsheds of adjacent properties. All five (5) members of the Board unanimously agreed.
- **Finding 4:** The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. 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 lake yard setback does not necessarily take into consideration the change in elevation between the seawall and the building envelope. In this case, there is a fourteen (14) foot drop between the applicant's house/existing deck and the seawall. The proposed project incorporates areas underneath the deck into a usable attached structure using quality design and materials. This project also provides the applicant with more manageable maintenance of the slope between his house and the seawall. All five (5) members of the Board unanimously agreed.
- **Conditions:** The Board of Zoning Appeals unanimously agreed the following condition should be added prior to approval of the variance: *the attached structure shall have electrical service only (no other utility services), and not be used for sleeping or living quarters.*

Based on the findings of fact, Mr. Folland made a motion to approve variance case #2011-01 with the aforementioned condition. Mr. Kummer seconded the motion. Motion carried with all five (5) members voting in favor of the motion.

Mr. Nichols thanked the Board for their time stating that he has served as a neighborhood associate president, a home builder, and is now a licensed Realtor, and he understands the time and challenges of being a member of the Board.

The Minutes from the October 18, 2010 meeting were presented. Mr. Tyler made a motion to accept the minutes as presented. Chairman Kummer seconded the motion. Motion carried with five (5) votes in favor and zero (0) votes against.

Chairman Kummer asked for the election of Board Officers for 2011. Mr. Folland made a motion to elect the current officers to continue in 2011. Ms. Brown seconded the motion. The officers are Mr. Ron Kummer as Chairman, Jon Fitzenrider as Vice-Chairman, and Christopher D. Folland as Secretary. Motion carried with all voting in favor.

Chairman Kummer asked the Board to review the meeting dates for the next year:

- April 18, 2011
- June 20, 2011
- August 15, 2011
- October 17, 2011
- December 19, 2011
- February 20, 2012

Mr. Tyler made a motion to accept the meeting dates as presented. Mr. Folland seconded the motion. Motion carried with all in favor.

There was discussion on printing information packets for the Board of Zoning Appeals. Most members expressed the desire to print their own BZA packets. Chairman Kummer asked for one (1) to be printed for him.

Hearing no other business, Kummer entertained a motion to adjourn. Mr. Harris made a motion to adjourn the meeting; Mr. Tyler seconded the motion. Motion carried. Meeting adjourned at 9:00 PM.

Christopher D. Folland, Secretary