

Town of Clear Lake - Board of Zoning Appeals Meeting Minutes – August 15, 2011

Board of Zoning Appeals Chairman Ron Kummer opened the August 15, 2011 meeting of the Clear Lake Board of Zoning Appeals 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:

Neal Blythe, Clear Lake Board of Zoning Appeals Attorney
Amy Schweitzer, Zoning Administrator and recorder of the minutes of the meeting
Thirteen (13) persons signed the sign-in sheet

Chairman Kummer briefly reviewed the Board of Zoning Appeals' procedures stating that the Clear Lake Board of Zoning Appeals existed to remedy unique situations, and a decision for one (1) situation does not set precedent for any other request.

Chairman Kummer stated that certain documents are required for all variance petitions, but that an issue existed with case #2011-02 regarding the submittal of those documents. Mr. Folland made a motion that the BZA Board Rules be suspended with regards to the submittal of a survey for the Martin's variance petition, case #2011-02. Mr. Tyler seconded the motion. Motion carried with each member voting in favor of the motion via a roll call vote. Chairman Kummer stated the rule is suspended for this particular variance petition.

Mr. Bob Martin introduced himself and his wife, Beth. Mr. Martin stated their request for a variance was so they could install a partial roof over an existing deck. Martin explained that the main entrance to the house was on the side of the house, and that it would be nice to have the entrance covered to protect them from the weather elements as they are locking and unlocking the door. He stated that the roof would be five (5) foot out from the house and ten (10) foot wide. The roof would go to the existing posts, and be constructed with wood, shingles, and vinyl siding. There would be a gable end.

Chairman Kummer asked if there were any questions from the Board for Mr. Martin. Ms. Brown asked if gutters would be added to the gable end. Mr. Martin stated yes. Mr. Folland asked if there would be any side screening to the west. Mr. Martin answered no.

There being no other comments or questions from the Board, Chairman Kummer entertained a motion to open the public hearing portion of the meeting. Mr. Folland made a motion to open the public hearing for case #2011-02, a variance request by Bob and Beth Martin. Mr. Harris seconded the motion. Chairman Kummer stated that the floor was open for comments for or

against the proposed project. Audience member Emma Brown, 432 Lake Drive, asked for clarity on the location of the proposed roof overhang. Mr. Martin stated it was on the west side of the home. Chairman Kummer asked about the neighbors on that side of the property. BZA Staff member Amy Schweitzer read aloud a letter from Jack and Karen Horrell, the neighbors on that side of the Martin's project. The letter was in support of the project. Chairman Kummer asked for other comments from the audience. With no additional comments offered, Mr. Folland made a motion to close the public hearing for case #2011-02, a variance by Bob and Beth Martin. Ms. Brown seconded the motion. Motion carried with all voting in favor.

Chairman Kummer asked the Board if there were additional questions or comments. Hearing none, Kummer took a trial vote before proceeding with the findings of fact for case #2011-02, a variance request by Bob and Beth Martin, for 796 Lake Drive, Clear Lake; a variance from Section 2.14 of the Unified Development Ordinance - relief from minimum side yard setback.

Finding 1: Legal notice of the application was provided to the Herald Republican Newspaper on July 27, 2011 and published August 4, 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. Mr. Folland made a motion to accept the finding as presented. Ms. Brown seconded the motion. Motion carried with five (5) votes in favor and zero (0) votes against.

Finding 2: The approval of the variance allowing the applicant to install a roof over part of the existing deck within the side yard setback will not be injurious to the public health, safety, morals, and general welfare of the community because the roof will be constructed in a manner that is complementary to the existing house mirror the existing roof pitch, and the proposed roof overhang will not add additional impediments to access the lake. Mr. Folland made a motion to accept the finding as presented. Ms. Brown seconded the motion. Motion carried with five (5) votes in favor and zero (0) votes against.

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 because the deck already exists and as it exists, it does not impact the use of adjacent properties. The proposed ~~deck~~ **roof** is only over a portion of the existing deck. The proposed roof will add a character element to the existing house in addition to the functionality it provides the homeowners. The proposed project will not impact viewsheds of adjacent properties. Mr. Folland made a motion to accept the finding as amended. Mr. Harris seconded the motion. Motion carried with five (5) votes in favor and zero (0) votes against.

Finding 4: The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the applicant's property because the house's main entrance is located on the side of the home, rather than the street-side of the home, and the current regulations combined with the shape of most of the existing lots do not generally accommodate a main entrance in the side yard. Mr. Folland made a motion to accept the finding as presented. Mr. Tyler seconded the motion. Motion carried with five (5) votes in favor and zero (0) votes against.

With all of the findings of fact being made in the affirmative, Chairman Kummer asked each member for a vote on case #2011-02, a variance request by Bob and Beth Martin for relief from

the minimum side yard setback. Each member voted to approve the variance as requested without conditions.

Chairman Kummer asked for case #2011-03 to be presented. Mr. Gerry McArdle, 318 Lake Drive, stated that he was the architect for Dr. Bryon Stephens who owns 960 Lake Drive. McArdle explained that the existing garage on the Lake Accessory lot is twenty (20) feet by twenty (20) feet, and only accommodates one (1) car. The proposal is to tear down that garage and build a new garage on the lot. The lot is a corner lot, and thus has two (2) front yard setbacks and two (2) side yard setbacks leaving a building envelop on that property is twelve (12) feet by thirty-two (32) feet.

McArdle stated that the existing west setback (which is a side yard) is 3.1 feet, and the existing north setback (also a side yard) is about 3.5 feet. McArdle stated that he had considered many different options for placing a garage on the lot, and this proposal was the one he thought would be most palatable to the Board of Zoning Appeals. Further complicating the situation are two (2) utility poles, each with guy wires along each street. McArdle stated he used the same side yard setbacks of the existing garage – 3.1 feet from the west property line and 3.5 feet from the north property line – as a starting point for the garage, but the proposed new garage extends further toward Elm Street on the south side of the lot. McArdle stated the proposal provided ample room for vehicles to back out of the garage, stop, and check for oncoming traffic before entering the street. Mr. McArdle stated there is no sight problem going around the corner, and the proposal is not much different than what exists.

Dr. Stephens introduced himself and stated that he asked Mr. McArdle to propose a garage that allowed ample room for a SUV-type vehicle and ample room for storage of lake toys that are currently stored in the sun room of the home. Dr. Stephens stated the garage would match the house and be visually appealing.

Chairman Kummer asked for questions from members of the Board. Mr. Harris asked about the proposed height. Mr. McArdle stated that it would meet the height requirement, but the pitch of the roof would need to be less than the pitch of the house. Mr. Tyler asked about water service to the garage. Dr. Stephens stated there would not be any water service to the garage. Mr. Folland asked Dr. Stephens if he was aware, when he purchased the property, that he couldn't do anything with the garage lot based on the ordinance that was in effect at that time. Dr. Stephens stated that he was not aware of the ordinance at that time. Mr. Folland asked that since part of the need was storage, and the house is new, why wasn't the storage need address with the new house. Dr. Stephens stated that a basement was not an option due to soils, and that they did incorporate a "trap door" to provide some storage in the crawl space, but that lasted only about a month as the tubes have gotten too large to fit into that space. Stephens added that they had some patio furniture they wished to store, as well.

BZA member Folland stated that the ordinance regulations in effect when Dr. Stephens purchased the property were stricter than those of today, and that Dr. Stephens didn't read much of the fine print before he purchased the property. Folland asked if a garage was considered when the cottage was built. Mr. McArdle stated that with the lake setback requirement being an

average of the neighbors, there was no place to put an attached garage. McArdle added that the back lot is intended to be a garage lot, and in fact, it is in a “neighborhood of garage lots.”

Folland suggested loading the garage from Lake Drive rather than from Elm Street. McArdle stated that was his first choice as well, but the existing power poles made it difficult, if not impossible. There was discussion about having the poles moved. Chairman Kummer added that he had to have a pole moved when he installed a driveway, and that he was treated well. Kummer agreed with Folland about having the driveway access Lake Drive, as opposed to Elm Street stating that it would mean more driveway for parking. Dr. Stephens stated he did not intend to use the driveway for parking – that is what the garage is for. He stated there is a parking space in front of the cottage, and that is where they park for loading and unloading. There was discussion about the best and safest location for the driveway.

Ms. Brown asked if the existing garage accommodated one (1) car. Dr. Stephens stated one (1) car and two (2) bikes fill the current garage. Ms. Brown asked if the garage currently has parking for one and a half cars and is not used for storage, is it realistic to expect someone to put the lake toys in the proposed garage for storage? Dr. Stephens said he would. The reason it is not used now is because it is wet, moldy, there are rodents in it, and no one – except him – will go into it.

Mr. Folland made a motion to close the regular meeting and open the public hearing for case #2011-03. Ms. Brown seconded the motion, and the motion carried with all in favor. Chairman Kummer asked if anyone in the audience had comments for or against the proposal. Mrs. Emma Brown asked about the distance of the proposed garage to the street. The proposed garage would be twelve (12) feet and nine (9) inches from the street. There being no additional questions or comments from the public audience, Mr. Folland entertained a motion to close the public hearing portion of the meeting. Kummer seconded the motion.

Mr. Folland asked about the driveway, expressing concern that the number of parking spaces did not meet the UDO requirement. Mr. McArdle stated there were four (4): two (2) in the proposed garage, one (1) on the driveway, and one (1) in front of the cottage. McArdle stated there was enough room to back entirely out of the garage before entering the street.

BZA member Bonnie Brown asked audience member Jim Geiger about moving utility poles. Mr. Geiger stated that usually the power company is not the problem, but rather it is getting ahold of the other utilities on the pole – like phone and cable. Mr. Geiger said it is doable; it is just a matter of getting in contact with the property person. He stated that a pole had been relocated on the Lake Drive side of Gerry Miller’s property. Geiger agreed that both poles in Stephens’ case are in bad spots and both have guy wires on them. McArdle added that there is also a grinder pit to further complicate site design.

Board member Chris Folland told the Board that the Miller’s to the north have already pulled a permit to build a house, and they are going to want to build a garage. The proposed garage, being only three (3) feet off the property line is a concern for him, especially knowing another garage (Miller’s) is expected in this area. Folland concluded that the Stephens’ bought this

property in 2005, and with it, the practical difficulties of building on it. They knew what they were getting.

Dr. Stephens stated that he had talked to Gerry Miller, and Mr. Miller is fine with the proposal and a setback that is less than five (5) feet. There was discussion about the spacing between garages and getting a lawnmower or bobcat down an eight (8) foot wide space.

Chairman Kummer took a preliminary vote before determining more discussion was necessary. Board member David Harris stated that he appreciated Folland's comments and agreed with them, but he was much less concerned about the side yard setbacks. Harris' concern is with safety issues. He stated that this was an awkward area. Harris asked if there were any comments from the Town Marshal on this proposal. Schweitzer stated that the Marshal had not reviewed the proposed project. Harris also stated that Dr. Stephens' knowledge of the limitations with the property before purchasing it was a non-issue for him. Harris stated that there was a lot he did not know when he moved to Clear Lake. His primary concern remains safety of vehicles on Elm Street. Kummer stated that Elm Street is such a short street that it is hard for someone to be going really fast. Mr. Tyler reminded the Board about the use of golf carts around the lake and kids driving them. Harris added that there is a hill crest along Elm Street to further complicate things.

In response to Harris' comment about safety in this area, Dr. Stephens asked if there was a history of accidents on that corner adding that he was not aware of any accidents that have occurred there. Board member Folland stated a lumber truck had overturned at this intersection at one time. Folland stated access from Lake Drive, as opposed to Elm Street, would be easier. Folland concluded that he could support a front yard setback variance on the Elm Street side for the garage, with the driveway accessing Lake Drive. Ms. Brown stated that the utility poles are an obstacle, but it that can be overcome. She stated that she believes the side yard setbacks need to be five (5) feet.

Chairman Kummer asked the Board if they were ready to proceed with the findings of fact for case #2011-03, a variance request by Jerry McArdle on behalf of Bryon Stephens, for 960 Lake Drive, Clear Lake; a variance from Section 2.16 of the Unified Development Ordinance - relief from minimum side yard setback.

Finding 1: Legal notice of the application was provided to the Herald Republican Newspaper on July 27, 2011 and published August 4, 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. Mr. Folland made a motion to accept the finding as presented. Mr. Tyler seconded the motion. Motion carried with all voting in favor.

The Board began discussing modifications to the proposed Finding 2. Mr. McArdle asked if they were to modify the proposal could it be tabled and heard at the next meeting. The logistics were discussed, and the Board generally discussed what modifications they would like to see: five (5) feet side yard setbacks, ten (10) feet off of Elm Street, twenty-five (25) to thirty (30) feet off Lake Drive with the driveway off Lake Drive. There was also discussion about rehabilitating the existing garage.

Mr. McArdle requested that case #2011-03 be tabled so the site plan can be re-worked to meet the Board's safety concerns. Mr. Folland made a motion to table case #2011-03 (McArdle/Stephens Variance) until the October 24, 2011 meeting. Mr. Tyler seconded the motion. Motion carried with all in favor.

After a five (5) minute break, Chairman Kummer asked for case #2011-04 to be presented. Rick Johnston of 180 Lake Drive introduced himself, his wife Kathy, and Mr. Lynn Delagrange stating that Delagrange would be able to address specific construction issues. Johnston stated that he purchased the property in 1997, tore down the house, and constructed a new cottage in 1998.

He stated that he has learned a lot spending time at the lake. One thing Johnston has learned living next to a stagnant channel is that lily pads act as a filter for everything on the lake including life jackets and dead fish among other things. He stated there is a problem with mosquitos and that between the mosquito problem and easterly sun, they have trouble enjoying the outdoors during most of the year. Johnston stated that a screened in porch over the existing deck would allow them to enjoy evenings without the mosquitos and early morning views without the hot, blinding sun. At the time the deck was constructed, he received a variance for the deck to be twenty-five (25) feet from the lake and five (5) feet from the channel. This proposal is not going to increase anything – it is simply going to make the existing deck a “more-friendly environment” to spend time.

Dr. Johnston told the Board that the channel was man made and donated to conservancy. He told the Board that they should not be concerned that their decision would set precedence for anything because nothing around the channel will be developed because of the conservancy. He stated that there are no other channels around the lake, but there are “cut backs” like Sailor's Cove. Johnston told the Board that there is a waterway east of the public access site and there is an existing screened-in porch about nine and one-half (9½) feet off that waterway.

Johnston stated the proposed project would not obstruct any view of the lake; it would not change anyone's use of the lake; it would simply make it more convenient for him and his wife to enjoy their property. He stated they decided to propose the screening-in on the north end of the existing deck because screening-in the south end of the deck would not flow well with the existing layout of their home; screening-in the middle portion of the existing deck would involve major reconstruction of the existing center area of glass; and the proposed location would not require any major reconstruction of the deck or existing lake side façade of the cottage. The lines will remain the same, and the peak on the screened-in portion of the deck will complement the existing roof structure.

Chairman Kummer asked the Board if there were any questions. Hearing none, he entertained a motion to open the public hearing. Mr. Folland made a motion to suspend the regular meeting and open the public hearing for case #2011-04. Chairman Kummer asked for members of the audience to speak for or against the proposed project.

Mr. Jack Daniel of 178 Lake Drive introduced himself and his wife Lorrie. He stated that he owns the house adjacent to Dr. Johnston, and that they wish to express their concerns and

objections. Daniel gave a brief history of the demolition and construction that has occurred on the property since Dr. Johnston purchased it, including the replacement of the seawall to which there were significant objections.

Mr. Daniel stated that the driveway improvement and reconstruction was done in such a way to redirect the flow and downspouts onto the Daniel's property. No good faith effort has been made to take care of the drainage problem. Mr. Daniel's concern is that if this project is approved, it could mean even more water on his property, when it should more appropriately be directed toward the lake.

Daniel requested the downspout situation be corrected prior to any more impervious surfaces being added. Mr. Daniel also asked about the Johnston's being over and above the approved lot coverage ratio. Daniel had calculated square footages based on the GIS system and provided his calculations to the Board.

Mr. Daniels stated that calling bugs and insects a hardship could set a precedent and everyone with waterfront property deals with these issues. The Johnston's knew what they were purchasing, and they even created a fresh clean slate when they tore down the structures. Lastly, Daniel contended that there are existing drainage issues with respect to the property that need to be resolved prior to approval of this project, and if those problems were resolved he would forego his objections to this project.

Mr. Delagrangé stated the GIS is accurate in that the bearings and dimensions of the lots are correct. However, the house location on the lot is not accurate at all.

Audience member Emma Brown confirmed that the proposal was to screen-in a portion of the existing deck. Mrs. Emma Brown asked for confirmation that some additional patio area would be added on the lake side of the deck. Mrs. Daniel again raised concerns about even more water being directed to her property. Board member Folland stated that drainage can be a condition, but it can only address drainage that results from the project for which the Board's approval is being sought.

Chairman Kummer asked if there were other comments from the audience. He specifically asked Mr. Helmuth if he wanted to say anything. Mr. Helmuth responded with a negative nod. Mr. Folland made a motion to close the public hearing. Ms. Brown seconded the motion. Motion carried with five (5) votes in favor.

Kummer asked the Board for their questions. Mr. Harris confirmed that the request was for a setback variance, not a lot coverage variance. BZA staff Amy Schweitzer reviewed the coverage calculations on the survey and confirmed the Johnston's proposed project met the Lot Coverage requirements of the Unified Development Ordinance.

Board member Bonnie Brown asked about enclosing the middle portion of the deck, rather than the end. The applicants stated they would not get any shade from the east sun if they screened in the middle of the deck. Brown asked about the building materials. Mr. Delagrangé stated there would be an asphalt shingled roof, a two-foot knee wall, and stud wall with fiber cement shakes.

The deck boards may also be replaced with a composite wood. Brown asked how the deck boards would resist insects from coming through. Delagrance said they would be tight to each another.

Mr. Tyler did not have any questions. Mr. Folland asked if the current foundation would support the proposed project. Mr. Delagrance said three (3) pilings would be installed to support it, but not footers. It would be a light weight structure with just screening. The structure would not support windows or conversion to anything other than a screened porch. Mr. Folland asked if the Johnston's would commit to have the room maintained just as a screened room. Both answered yes. Folland informed the Board that Bruce Snyder, the previous zoning administrator, had allowed Dr. Johnston's house to be built five (5) feet off the channel, effectively viewing this as a "side yard" and that it was before the requirement was thirty (30) feet from any body of water.

Chairman Kummer stated that every house on the lake has a deck in the lake yard. He expressed concern about allowing a structure with a roof to stand in the lake yard and defending this to anyone else that comes in and asks for the same thing. Mrs. Johnston stated that in their case, there was absolutely no obstruction of neighboring views.

Ms. Brown asked why a knee wall was included, stating that a knee wall made it a little more permanent. Mr. Delagrance said it could be built without a knee wall, but it was included for logical reasons – to keep dogs, kids, and feet through screens at the floor level. Delagrance estimated the knee wall would be eighteen (18) to twenty-four (24) inches high.

Mr. Folland suggested the Board discuss conditions before discussing findings. He proposed the following conditions:

1. Drainage from the new structure shall be channeled to the lake.
2. The screened-in room shall always be maintained as a screened-in room. If the Johnston's or future owners of the property desire a more permanent structure, another variance would be required.

Mr. Harris agreed with those proposed findings.

Chairman Kummer asked the Board if there were additional questions or comments. Hearing none, Kummer took a trial vote before proceeding with the findings of fact for case #2011-04, a variance request by Rick and Kathy Johnston, for 180 Lake Drive, Clear Lake; a variance from Section 2.14 of the Unified Development Ordinance - relief from minimum lake yard setback reminding the Board that there will be conditions on drainage and the room always being maintained as screened-in porch.

Finding 1: Legal notice of the application was provided to the Herald Republican Newspaper on July 27, 2011 and published August 4, 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. Mr. Folland made a motion to accept the finding as presented. Mr. Harris seconded the motion. All five (5) members of the Board voted in favor of the motion.

Finding 2: The approval of the variance allowing the applicant to screen in a portion of the existing deck will not be injurious to the public health, safety, morals, and general welfare of the community because it has no impact on views or accessibility. Other than additional

runoff, which still meets the Town's Lot and Structure Coverage requirements, screening in of a portion of the existing deck has no impact on environmental features. Mr. Folland made a motion to accept the finding as presented. Mr. Tyler seconded the motion. Motion carried with four (4) votes in favor and one (1) vote against.

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 because uses and views of adjacent properties will not be altered by the screening-in of a portion of the existing deck. Mr. Folland made a motion to accept the finding as presented. Ms. Brown seconded the motion. Motion carried with four (4) votes in favor and one (1) vote against.

Finding 4: The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the applicant's property because being adjacent to a stagnant channel is a unique circumstance. Mr. Folland made a motion to accept the finding as presented. Mr. Tyler seconded the motion. Motion carried with four (4) votes in favor and one (1) vote against.

Conditions: The conditions were determined to be:

1. Drainage from the new structure shall be directed entirely to the north (channel and lake) side of the property.
2. The screened-in deck shall always be maintained as a screened-in deck. If the Johnston's or future owners of the property desire to convert the screened-in deck to a more permanent structure, another variance request shall be made.

Four (4) members of the Board voted to approve, with the aforementioned conditions, case #2011-04, a variance request by Rick and Kathy Johnston for 180 Lake Drive; requesting relief from the minimum lake yard. Chairman Kummer voted to deny case #2011-04. Case #2011-04 was approved with conditions.

In old business, Kummer asked for the approval of the minutes from the February meetings. Mr. Folland made a motion to approve the minutes from the February 21, 2011 meeting; Mr. Kummer seconded the motion. Motion carried, minutes approved by both members that attended the meeting. Mr. Folland made a motion to accept the minutes of the February 23, 2011 meeting as presented. Ms. Brown seconded the motion. Motion carried with all voting in favor.

In new business, Chairman Kummer asked for election of a Vice Chairman of the Board. Mr. Tyler nominated David Harris as Vice Chairman. Ms. Brown seconded the motion. Mr. Harris stated that he was not spending as much time at the lake. He stated that he'd take the role provided the Board realized that he was going to be dedicating considerable time to a new business. Mr. Folland moved to close the nominations. Mr. Tyler seconded the motion. Motion carried with all voting in favor. Mr. Harris is the new Vice Chairman of the Board.

Chairman Kummer asked about the proposed changes to the BZA Rules.

- Mr. Folland stated that the current filing deadline was twenty-one (21) days before a meeting. Folland stated this was a bit of a squeeze for getting all the proper notice and that all of the other deadlines are twenty-eight (28) days before a meeting. The Board agreed that a twenty-eight (28) day deadline was reasonable. Ms. Brown asked about putting the filing deadlines

on a standard calendar, the Town's calendar, the Clear Lake News, or including them in the directory.

- Folland stated that in considering current amendments to the Town's Unified Development Ordinance, it seemed awkward to reference the BZA "Board Rules" as they are titled. Folland suggested they be titled "Rules of Procedure."
- Finally, the idea of installing a "public hearing sign" in the front yard of properties that are the subject of a variance hearing has been brought up. There was discussion on the cost of the signs and the inconvenience of mowing around them. Concerns about folks delighting in moving the signs around were discussed. The Board decided to table the sign posting idea until further research can be completed.

Mr. Folland made a motion to amend the BZA Board Rules by moving the filing deadline from twenty-one (21) days before the meeting to twenty-eight (28) days and the change the name of the "Board Rules" to the "Rules of Procedure." Mr. Tyler seconded the motion. Motion carried with five (5) voting in favor and zero (0) votes against the motion.

There being no further business, Mr. Folland made a motion to adjourn the meeting. Mr. Tyler seconded the motion. Motion carried; meeting adjourned at 9:25 PM.

Christopher D. Folland, Secretary