

Town of Clear Lake - Board of Zoning Appeals Meeting Minutes – October 24, 2011

Board of Zoning Appeals Chairman Ron Kummer opened the October 24, 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

Chairman Kummer gave some brief introductory comments regarding the membership composition of the Board and the Board's responsibilities.

Kummer stated the first item of business was Case #2011-05, a variance from development standards filed by Robert Adams of 276 Lake Drive. Board member Eric Tyler told the Board and audience that he was a close personal friend of Mr. Adams and if anyone objected to him hearing this case, he would stand down. Kummer asked for any objections, and hearing none, Kummer asked Mr. Adams to present his case.

Mr. Bob Adams, 276 Lake Drive, introduced himself and Jacob Bovara, the landscaper for the project, and John Duvendack, the contractor for the project. Adams stated that he would be in Clear Lake as much as possible, but he was leaving Mr. Bovara and Mr. Duvendack in charge of the project. He stated that his property was long and narrow, and the house was built off of an existing wall. The property between the house and lake is not very usable because it is very steep and the soil is very sandy. Cutting grass on the slope is a real chore, and even walking along this area is tricky. As a result, he and his family do not get to use the area between their home and the lake. The whole idea of this project is to reclaim some space for outdoor living. The result will be a nice place for his family to use and a visually appealing area for other lake residents to enjoy – as opposed to the brown grass that exists today.

Mr. Bovara further emphasized the severe grade change from the back of the house to the lake, stating that there is nothing to stop any runoff into the lake. The proposed project includes terracing the land to create level areas to slow runoff, as well as eliminate the risk of injury. Mr. Bovara said the retaining walls are vital to stabilizing and creating an environment in which the plantings can thrive. Bovara stated there would be a walkway of pervious stone and aggregate in between the terraced retaining walls. The project also includes a gazebo to provide shade from the sun and further enhance the family's outdoor space. Trees have a difficult time rooting because of the slope and sandy soil.

Mr. Adams stated that he is in a unique situation in that he does not have neighbors, so views of adjoining properties are really not an issue. Because of the grade change from the street to the lake, the view from the street will actually be over the roof of the gazebo.

Mr. Folland made a motion to open the public hearing for Case #2011-05, a variance from development standards filed by Robert Adams for 276 Lake Drive. Ms. Brown seconded the motion. Kummer opened the public hearing, and asked for comments or questions from the Board. Mr. Harris asked about the pervious surface that was planned for the walk. Mr. Bovara stated that it was natural stone, sitting on an aggregate foundation with a grade-A base. He stated there would not be mortar joints so the water will run through the aggregate. Bovara stated that a silt fence would be used during construction. Mr. Tyler had no questions. Mr. Kummer stated that the design looked clever and he thought it was going to be beautiful. Kummer asked about the gazebo and how it would look from the lake. Mr. Adams stated that the gazebo would be a maximum eleven (11) feet tall plus a cupola on the top, and that the cupola would be visible from the street. Mr. Duvendack stated that the gazebo will be much lower than the home.

Ms. Brown asked about the existing trees on the site. Mr. Bovara said the ash tree that was in the pathway was not healthy and would be removed. The walnut trees would be preserved. Brown asked about the proposed plantings and grass thriving in spite of the sandy soil. Mr. Bovara stated that organic matter would be added to the soil and the terracing would also make a healthier environment for the plants.

Mr. Folland stated that the proposed gazebo appeared to be on two (2) separate lots. He asked Mr. Adams if he would be willing to join those two (2) lots via the Administrative Subdivision process. Adams stated sure. Folland briefly explained the Administrative Subdivision process, and the timing was discussed.

Hearing no other comments or questions from the Board, Chairman Kummer asked the audience for comments and opinions for or against the proposal. Mr. Blythe, the Board's Attorney, announced that the State Law had recently changed, and the Board needed to be a little more formal in keeping track of those that speak about cases brought before the board. As a result, anyone wishing to speak for or against should complete a written appearance form. Blythe identified and made the forms available.

Board Member Ms. Brown stated that adjacent property owner Julie Waterfield contacted her to voice her support, provided the project was within reason.

There being no comments from the audience, Mr. Folland made a motion to close the public hearing for Case #2011-05 (Adams) for 276 Lake Drive. Mr. Tyler seconded the motion. Motion carried with all voting in favor. Folland made a motion to re-open the regular Board of Zoning Appeals meeting; Mr. Harris seconded the motion. Motion carried with all in favor.

Chairman Kummer took a preliminary vote before proceeding with the findings of fact for Case #2011-05, a variance request by Robert Adams for 276 Lake Drive granting relief from Section 2:14, minimum lake yard setback.

Finding 1: Legal notice of the application was provided to the Herald Republican Newspaper on September 30, 2011 and published October 7, 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 five (5) votes in favor and zero (0) votes against.

Finding 2: The approval of the variance allowing the applicant to construct a gazebo and fireplace within the lake yard setback will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed project has no impact on views or accessibility to streets. The slope of the lot is such that very little of the gazebo, if any, will be visible from Lake Drive. Additionally, the gazebo will have the same setback from the lake as the existing elevated deck on the property. 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.

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 proposed gazebo and fireplace will be constructed of high quality materials and in a way that is complementary to the house. The property directly adjacent to the proposed gazebo is undeveloped. With the exception of the applicant's house, the proposed gazebo will be over two hundred feet from the closest residential dwelling and nearly four hundred feet from any single-family residential dwelling. Together, with the landscaping, the gazebo will enhance the "resort feel" desired by the community. Mr. Folland made a motion to accept the finding as presented. 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 Adams family cannot utilize their property to its fullest potential because the shape and slope of the property creates steep and unsafe grade changes. Mr. Folland made a motion to accept the finding as amended. Mr. Tyler seconded the motion. Motion carried with five (5) votes in favor and zero (0) votes against.

Chairman Kummer took a roll call vote of Board Members on the approval of a variance for 276 Lake Drive (Adams) granting relief from the minimum lake yard setback. Before the vote was taken, Mr. Folland made a motion that an Administrative Subdivision be completed prior to construction of the gazebo as a condition of approval. Mr. Tyler seconded the motion. Motion carried with all in favor of adding the condition. Kummer continued with the roll call vote with each member of the Board voting to approve the minimum lake yard setback variance.

Kummer began the findings of fact for the variance from development standards for Robert Adams for 276 Lake Drive, granting relief from Section 5.54 Retaining Wall Standards, allowing a retaining wall to be closer than six (6) feet to the lake.

Finding 1: Legal notice of the application was provided to the Herald Republican Newspaper on September 30, 2011 and published October 7, 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 approve the finding as presented. Mr. Tyler 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 construct a retaining wall less than six-feet from the lake will not be injurious to the public health, safety, morals, and general welfare of the community because it will be unnoticeable to anyone other than the applicant, and as part of a larger landscape plan which includes a walkway between the retaining wall tiers, it will make walking along the lake edge safer than it currently is. Mr. Folland made a motion to approve the finding as presented (on screen). Mr. Tyler 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 proposed retaining wall is part of a landscape plan that will significantly enhance the exterior of the applicant's property. Uses and viewsheds of adjacent properties will not be affected by the retaining wall. Mr. Folland made a motion to approve the finding as presented (on screen). Mr. Tyler 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 there is a significant change in elevation from the house to the water's edge. As proposed, the tiered retaining walls leave room for a walkway while including tiered walls that are less than four feet high, as encouraged in Section 5.54.A.4 of the UDO. Mr. Folland made a motion to approve the finding as presented (on screen). Mr. Tyler seconded the motion. Motion carried with five (5) votes in favor and zero (0) votes against.

Chairman Kummer took a roll call vote of the Board, with each member individually approving the variance without conditions for 276 Lake Drive (Adams) for relief from Section 5.54 Retaining Wall Standards.

Chairman Kummer asked for Case #2011-06, Janice Wenck. Ms. Wenck introduced herself and stated that the existing deck at 114 Channel Drive needed repairs. There had been an accident of someone falling down the existing stairs. Ms. Wenck stated that they removed the deck and began reconstructing the deck, but ran into a problem. They did not get permits. Currently, the deck they had begun to reconstruct has been removed – but the home was designed with that deck. Ms. Wenck stated that they were trying to clean things up on the property.

Mr. Folland made a motion to suspend the regular Board of Zoning Appeals meeting and open the public hearing for Case #2011-06, a variance from development standards request by Janice Wenck for 114 Channel Drive. Ms. Brown seconded the motion. Motion carried with all voting in favor.

Chairman Kummer asked for comments and questions from the Board. Mr. Harris asked if the project only involved replacing the existing deck. Ms. Wenck stated that they had wanted to add additional decking, but that ended when they figured out there were rules that had to be followed. Mr. Tyler asked who the contractor was for the project. Mr. Bonitati (speaking on behalf of Ms. Wenck) stated that some friends of theirs were going to be doing the construction. Ms. Brown asked if they had spoken with the County Building Department and understood that there were several inspections that would need to be conducted during the construction process. Mr. Bonitati assured the Board that the friends had adequate experience. Brown asked about railing around the deck and screening underneath it. Mr. Bonitati stated that treated wood would be used for the railing, and new lattice would be installed to hide the area underneath the deck.

Mr. Folland asked if screening was an issue per the Unified Development Ordinance. The Board determined that if it decided to require screening as part of this project, then there would not be an issue with the provisions of the Unified Development Ordinance.

Chairman Kummer asked for any comments for or against the proposal. Hearing none, Mr. Folland made a motion to close the public hearing for Case #2011-06 and re-open the regular portion of the Board of Zoning Appeals meeting. Mr. Tyler seconded the motion. Motion carried with all in favor.

The Board determined that screening the underneath portion of the deck should be included as a condition of approval. There was a brief discussion on a portion of the Wenck's property that was vacated right-of-way. That situation was remedied and properly filed when Metz (the previous owner) sold the property to the Wenck's.

Kummer took a trial vote, and then reminded the Board that there were two (2) different variances. Chairman Kummer proceeded with the findings of fact for Case #2011-06 a variance request from development standards for 114 Channel Drive (Wenck) requesting relief from Section 5.07 AS-04E Single-family Residential Accessory Structure Standards: Location.

Finding 1: Legal notice of the application was provided to the Herald Republican Newspaper on September 30, 2011 and published October 7, 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. Motion carried with five (5) votes in favor and zero (0) votes against.

Finding 2: The approval of the variance allowing the applicant to construct an elevated deck in the front yard will not be injurious to the public health, safety, morals, and general welfare of the community because the elevated deck has no impact on public health issues, views of the lake, accessibility, or visibility. 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.

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 proposed elevated deck replaces a deck that was in disrepair. The new deck will be more structurally sound and built to meet current building codes. Uses and viewsheds of adjacent properties will not be altered by the proposed project. 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.

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 main living area of the home is significantly above grade, thus requiring steps and some sort of platform to provide convenient access to the home. Additionally, the lot is a corner lot meaning there is no rear yard, and placement of the house on the lot leaves the front yard as the primary location for any outdoor recreation. 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.

Chairman Kummer took a roll call vote of Board Members on the approval of a variance for 114 Channel Drive (Wenck) granting relief from the accessory structure location requirements. Before the vote was taken, the Board agreed that screening the area under the deck with an appropriate material would be a condition. Kummer continued with the roll call vote with each member of the Board voting to approve the accessory structure location variance with the condition as stated above.

Chairman Kummer began the findings of fact for the second variance for Case #2011-06, a variance from development standards request made by Janice Wench for 114 Channel Drive, requesting relief from Section 2.12 Minimum Front Yard Setback.

Finding 1: Legal notice of the application was provided to the Herald Republican Newspaper on September 30, 2011 and published October 7, 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 five (5) votes in favor and zero (0) votes against.

Finding 2: The approval of the variance allowing the applicant to construct an elevated deck in the front yard will not be injurious to the public health, safety, morals, and general welfare of the community because the elevated deck, although within the Channel Drive thirty foot setback, is further back from Channel Drive than a portion of the house. The proposed deck does not impact accessibility or visibility to/from adjacent streets. 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.

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 proposed elevated deck replaces a deck that was in disrepair. The new deck will be the exact same size as the deck that existed, be more structurally sound, and be built to meet current building codes. Uses and viewsheds of adjacent properties will not be altered by the proposed project. 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.

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 elevated deck is an important component for accessibility to the house and to the enjoyment of the outdoors. As a non-conforming building, the house was built with a setback that is less than the current standard. The applicant wishes to provide access to the house, and that means the elevated deck needs to have a setback on the Channel Drive side that is less than the current standard. Mr. Folland made a motion to accept the finding as presented. Mr. Harris seconded the motion. Motion carried with five (5) votes in favor and zero (0) votes against.

Chairman Kummer took a roll call vote of Board Members on the approval of a variance for 114 Channel Drive (Wenck) granting relief from the Section 2.12 minimum front yard setback. Each member of the Board voting to approve the requested variance.

Under old business, Chairman Kummer asked for Case #2011-03, a variance from development standards filed by Gerry McArdle for Bryon Stephens for a garage at 960 Lake Drive to be presented. This case was tabled at the Board's August 15, 2011 meeting.

Mr. McArdle stated that the garage's location had been changed with the driveway entrance off of Lake Drive. McArdle reported that one of the guy wires would be removed. The square footage of the garage is exactly the same as the one that was originally proposed. Chairman Kummer asked how far into the ground the garage would sit. Mr. McArdle stated approximately four (4) feet in the back. Mr. Folland asked about drainage. McArdle stated that the drainage would go exactly where it goes now. Ms. Brown asked about the small maple tree. Mr. McArdle stated that if it could be saved, it would. But, if it couldn't be saved, the Landscape Standards in the Unified Development Ordinance would be met.

Ms. Schweitzer stated that she had forwarded the drawings to the Town Marshal for comment, but heard nothing back from him. Kummer took a trial vote before proceeding with the findings of fact for Case #2011-03, a variance for development standards for 960 Lake Drive (McArdle/Stephens) granting relief from Section 2.16 minimum front yard setback for both front yards (Lake Drive side and Elm Street side).

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. Motion carried with five (5) votes in favor and zero (0) votes against.

Finding 2: The approval of the variance allowing the applicant to construct a new garage will not be injurious to the public health, safety, morals, and general welfare of the community because the new garage will replace an existing garage, and while the new garage is a bit larger than the existing garage, the expanded area of the garage makes use of the "buildable area" on the lot. The new garage will be constructed with materials and in a manner that is complementary to the existing house and neighborhood. The proposed

garage and driveway meet the Town's vision clearance standards, and therefore will not hinder accessibility to public roads or visibility of traffic. Mr. Folland made a motion to accept the finding as presented. Mr. Harris 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 a garage already exists on this lot, and it is surrounded, primarily, by other garages on garage lots. The proposed garage will look better, add character, and function better for the owners. Mr. Folland made a motion to accept the finding as presented. 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 setbacks result in a building envelope that is approximately ten feet (10') by thirty feet (30') which does not accommodate a structure/garage that is very functional. Mr. Tyler made a motion to accept the finding as presented. Mr. Folland seconded the motion. Motion carried with five (5) votes in favor and zero (0) votes against.

Chairman Kummer took a roll call vote for Case #2011-03, a variance request for the garage lot associated with 960 Lake Drive (McArdle/Stephens) requesting for relief from minimum front yard setback. Each member of the Board voted to approve the variance request without conditions.

In other old business, Kummer asked the Board about the minutes from the August 15, 2011 meeting. Mr. Harris made a brief clarification, but stated he did not see a need to amend the minutes. Mr. Folland made a motion to approve the minutes as presented. Ms. Brown seconded the motion. Motion carried with all in favor.

Kummer asked about the notice by yard signs. Ms. Brown asked if this was required by the state. Schweitzer stated it was not required notice. Mr. Blythe stated that if the Board decided to require yard sign notice for variances, that it should be required for all other petitions – for example rezonings, subdivisions, etc. Mr. Tyler asked if a deposit would be required for the signs. The Board discussed the advantages and disadvantages of signs. Kummer stated that he felt the Board should wait until 2012 to make these changes. Blythe stated that the Board could agree in principle that this is something it wants to do, but the policy should be put in writing before becoming effective.

Ms. Brown asked about the requirement of applicant's staking their property. Schweitzer stated that each applicant is made aware of this requirement.

Schweitzer informed the Board that a Special Meeting of the Board of Zoning Appeals would take place in November. There was discussion about members' availability and coming up with an alternate member of the Board for that meeting. There was additional discussion about the meeting date, but it was determined the meeting would be November 21, 2011 at 7:00 PM in the Clear Lake Town Hall.

Chairman Ron Kummer asked for other business to be brought before the Board of Zoning Appeals. Hearing none, Mr. Folland made a motion to adjourn. Mr. Harris seconded the motion. Motion carried; meeting adjourned at 8:30 PM.

Christopher D. Folland, Secretary