

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

Board of Zoning Appeals Chairman Ron Kummer opened the November 21, 2011 special 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 #2011-07, a variance from development standards filed by Barry Worl of 787 Lake Drive. Mr. Worl began by telling the Board he wished to install an elevated upper level deck on the front of the house. The reason for wanting to install the deck is it would provide an egress out of that second level in the event of a fire or any emergency. The elevated deck would also provide a better view of the lake. Recently, a large tree that was in his viewshed was removed and with the deck, he would be able to get back a lot of the view he has lost due to the tree and construction of larger cottages. Worl added that the new deck should improve the appearance of the home, and that all of his neighbors have written letters of support for the proposed project.

Mr. Folland made a motion to suspend the regular Board of Zoning Appeals meeting and open the public hearing for Case #2011-07, a variance request by Barry Worl for 787 Lake Drive. Mr. Tyler seconded the motion. Motion carried will all in favor. Chairman Kummer opened the public hearing and asked for comments in favor of or opposed to the project.

Mr. Gerald McArdle of 318 Lake Drive identified himself, and asked if the proposed elevated deck was within the building envelope. Mrs. Schweitzer stated yes. Mr. McArdle asked why the Unified Development Ordinance would permit a second floor primary structure addition in this location but not a deck. Mr. Folland stated that question was a question for the Plan Commission. McArdle stated that it did not make any sense to him and it should be changed. Mr. Harris asked if there was anything that could be done tonight, to change this provision. Mr. Blythe stated no; any changes would need to be made by the Plan Commission. Chairman Kummer stated that the issue could not be fixed at the Board of Zoning Appeals meeting, and there was no need to dwell on it.

Kummer asked for other comments for or against Case #2011-07. Hearing no comments from the public, Kummer asked for questions from Board members. Ms. Brown asked if some sort of stairway from the elevated deck to the ground was included in the project. Mr. Worl stated exterior stairs to the elevated deck were not included as part of the project, but he would have a rope ladder for those emergency situations. Worl explained the other options for exiting the second floor in case of an emergency. Mr. Delagrang told the Board that there are rope ladders created specifically for the purpose that is being discussed. Circular stairs and the aesthetics of adding a staircase were discussed, and the Board and Worl agreed that exterior stairs to the elevated deck would detract from the aesthetics of the structure.

Mr. Harris asked if there were plans to screen in the lower level (and existing) deck. Mr. Worl stated no.

Chairman Kummer informed the Board that several letters of support had been received for the project.

- Fred and Jan Schultz of 786 Lake Drive have no objections.
- Martin and Marion Retcher of 794 Lake Drive believe project would be beneficial to the neighborhood.
- Bob and Beth Martin for 796 Lake Drive are in favor of the project.
- Alois and Jean Gibson of 790 Lake Drive have no objections.
- Jack and Karen Horrell at 800 Lake Drive are in support of the project.
- Dick and Mary Lou Fisher of North 850 East do not object to the project.

Hearing no other comments on the proposed project, Kummer entertained a motion to close the public hearing. Mr. Folland made a motion to close the public hearing for Case #2011-07, a variance request by Barry Worl for 787 Lake Drive, and reopen the general meeting. Ms. Brown seconded the motion. Motion carried with all voting in favor.

Chairman Kummer took a preliminary vote before proceeding with the findings of fact for Case #2011-07, a variance from development standards request by Barry Worl for 787 Lake Drive requesting relief from Section 5.14F1 of the Unified Development Ordinance. Granting the variance would allow Mr. Worl to construct an elevated deck in the front yard.

Finding 1: Legal notice of the application was provided to the Herald Republican Newspaper on October 31, 2011 and published on November 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 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 or public views of the lake. The proposed project is within the building envelope and will not impact public rights-of-way. 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 uses and views of all adjacent properties will not be impacted by the proposed project. The properties on each side are garages and the properties on the other side of Lake Drive are focused toward the lake (away from the proposed project). The proposed project will actually improve the street side appearance of the home and add character elements that make the home more fitting with the lake setting. 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 main living area of this home is on the second floor. The proposed elevated deck gives the applicant improved access to the outdoors from the main living area of the home and provides access to enjoy lake views from 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.

After making all of the necessary findings of fact, Chairman Kummer took a roll call vote for Case #2011-07. Each member of the Board of Zoning Appeals voted to approve the variance permitting the elevated deck, as proposed, in the front yard.

Chairman Kummer told the Board the next item of business was Case #2011-08 a variance from development standards filed by James (Jim) and Rebecca (Becky) Hauguel. Mr. Folland made a motion to open the public hearing. Mr. Harris seconded the motion.

Mr. Hauguel began his presentation by thanking the Board for taking the time to hold a special meeting. He told the Board that their intention was to replace an existing cottage that had been in the family for five (5) generations and that had deep emotional connections. They had not approached the project lightly – giving special consideration to how the project impacted their neighbors of so many years while also taking into consideration the site limitations and the needs of the family. Hauguel stated they were requesting two (2) variances, and the need for those variances stems from the significant disadvantage they experience in how the lake yard setback is calculated. Hauguel stated that although their request was for relief from the lake yard setback and the street yard setback, the structure was an appropriate size for the lot with the structure coverage calculation being about 23% (twenty-three percent), when the maximum permitted is 35% (thirty-five percent). Hauguel also added that the proposed project would eliminate the garage that exists in the Lake Drive right-of-way, and the Hauguel's intend for the new house to become their primary, year-round residence.

Mrs. Nancy Border introduced herself and stated that her husband's grandfather had bought the cottages seventy (70) years ago. The main reason for this project is so that the family can continue to enjoy the lake.

Mrs. Judy Troll, 152 Lake Drive, introduced herself and stated that she is delighted to have the Hauguel's building and to have them as permanent neighbors. She stated that all of the kids have grown up together. Mrs. Troll expressed a little concern about the close proximity of the proposed new structure to her property line and that she wished it could be moved over a little bit.

Chairman Kummer asked if there were other comments. Mr. Jeff Bushey, Fort Wayne, introduced himself and told the Board that the proposal was the result of several design re-iterations. The plans and design of the structure have been modified to get to what they believed was the best option – for their needs and to not hinder any neighboring views of the lake. Mr. Hauguel followed up by saying that they had taken as much into consideration as possible, and they are very restricted on what they could do with their lot.

Discussion surfaced on the viewshed of the neighboring property, 158 Lake Drive, owned by Jacky DeWert. DeWert owns a full lot, and then owns a half-lot between her full lot and the Hauguel's property. (The Hauguel's actually own the other half of the lot DeWert owns). The original viewshed drawing for DeWert's property submitted as part of this proposal did not include the half lot DeWert owns. This was brought up by the DeWert's, and the Hauguel's were asked to modify the viewshed to include the half lot and provide that drawing to the Board for this meeting, which they did.

Chairman Kummer asked about the DeWert's. Schweitzer stated that they were unable to attend the meeting due to an unexpected hospitalization, but there had been some e-mail correspondence with them. The DeWert's are concerned about encroachment into the viewshed. Schweitzer provided copies of that e-mail correspondence to the Board, as well as copies of e-mails from James Horein and Don Schenkel which were both in favor of the project.

Mr. Harris clarified the street yard variance request. The corner of the proposed attached garage is 13'6" from the property line. Mr. Kummer asked if the garage were a single car garage how far would it be from the property line. Mr. Bushey made some changes to the plans and stated the garage would still not meet the 25' street yard setback. Bushey stated that the proposed 13'6" setback came from lining up with the existing garage at 152 Lake Drive (Troll). There was discussion about the practicality of an attached garage and the existing garage on the neighboring Lake Accessory lot. Mr. Delagrangue reminded the Board that the existing garage that is in the Lake Drive right-of-way would be removed as part of this project.

Mr. Tyler stated that he had an issue with the proposed structure being so close to Lake Drive. He stated that it is a safety issue. Mr. Hauguel stated the soil type limits where they can build. If the house is too far forward, it could reduce the stability of the house.

Mr. Folland asked if other designs had been contemplated, including ones without a garage. Hauguel stated that the plan they originally submitted had the two-car garage and did not block the viewshed – which was their goal. Only after modifying the viewshed to include the DeWert's half lot, does the proposed structure now encroach into the viewshed, but that was what they were trying to avoid.

Ms. Brown expressed concern about the driveway entry into the garage not lining up. Mr. Hauguel stated that they wanted the new driveway to line up with the driveway for the back lot garage. Ms. Brown also asked about the height of the proposed elevated deck in relationship to Mrs. Troll's deck. It was estimated that the proposed elevated deck would be two (2) or three (3) feet above Mrs. Troll's existing deck.

Mr. Folland made a motion to close the public hearing and re-open the regular Board of Zoning Appeals meeting. Mr. Tyler seconded the motion.

Mr. Folland stated that as the President of the Plan Commission and the Chief Keeper of the Unified Development Ordinance, it was the goal to keep all structures away from the street. Folland stated that "practical difficulties" doesn't mean "I don't get to build where I want to." Folland stated that only three (3) houses in this area have an attached garage. Folland stated that there are some practical difficulties with the lake shore cutbacks, and the DeWert's are in a different line than the Hauguel's, but that he has reservations about approving a viewshed setback without the DeWert's present.

Mr. Tyler and Ms. Brown agree that granting relief from the street yard setback is a safety issue. Tyler added that with proximity of the structure to the street and congestion on holiday weekends, a street yard variance is not something he can support. Tyler agrees that the DeWert's should be presented if they Board is going to approve a viewshed variance.

Ms. Brown stated that she stood on the DeWert's porch and believes the view from their porch would be minimally impacted by the proposed project.

Discussion ensued and design changes were made based on those discussions. Mr. Bushey was able to make the design changes as the meeting and provide hard copies noted with "BZA Design with 11/21/2011." The changes include modifying the corners of the proposed attached garage and moving the entire structure toward the lake to achieve the required twenty-five (25) foot street yard setback. This would allow better driveway alignment as well. The proposed structure would encroach into the required lake yard setback, but the corner of the proposed structure would not encroach into the DeWert's viewshed. The proposed elevated deck would be modified so it also did not encroach into the DeWert's viewshed and would not come any closer to the lake than Mrs. Troll's existing lake side deck. The elevated deck, then, would no longer be symmetrical. Mr. Delagrange asked if a small elevated deck that cantilevered out from the structure could be added. The Board agreed that if it did not encroach on the viewshed, then it could be added.

Chairman Kummer took a preliminary vote before proceeding with the findings of fact for case #2011-08, a variance from development standards filed by James and Rebecca Hauguel for 156 Lake Drive. Kummer noted, the design revisions made during the meeting resulted in relief from the lake yard setback (Section 2.14) being the only variance necessary for the project.

Finding 1: Legal notice of the application was provided to the Herald Republican Newspaper on October 31, 2011 and published November 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 build a house and elevated deck that does not meet the lake yard setback will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed house will be approximately seventy-one (71) feet off the lake and the elevated deck will not be in the viewshed. The massing of the home is appropriate for the lot as indicated by the structure coverage (estimated 23%) and lot coverage (estimated 36%) ratios for the project. Mr. Folland made a motion to accept the finding as amended. 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 proposed house will not impact the ability of the neighbors to use their properties for residential purposes. The value of adjacent properties will increase because the new home will be constructed of quality materials and possess character that is consistent with the lake setting. Although the established lake setback will not be met, the proposed lake yard setback is substantial, lot and structure coverage ratios are well-below the allowed maximums, and the viewshed standards are met. 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 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 applicant's lot is located where the edge of the lake curves. This curve, combined with the setback of an existing adjacent cottage, leaves about half of the applicant's lot on the "buildable" side of the established building setback line on the lake side. 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.

Having made all of the appropriate findings of fact, Mr. Folland made a motion to approve the variance from development standards, Section 2.14 Minimum Lake Yard Setback, for 156 Lake Drive (Hauguel) and approve the plans as amended during the Board of Zoning Appeals meeting and dated 11.21.2011 with the condition that all existing structures on the lot are removed. Mr. Kummer seconded the motion. Kummer took a roll call vote of the Board and each member voted in favor of the motion. Motion carried.

There being no further business, Mr. Folland made a motion to adjourn. Mr. Tyler seconded the motion. Motion carried; meeting adjourned at 9:00 PM.

Christopher D. Folland, Secretary