

## **Town of Clear Lake - Board of Zoning Appeals Meeting Minutes – April 16, 2012**

Board of Zoning Appeals Chairman Ron Kummer opened the April 16, 2012 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  
Dave Harris  
Eric Tyler

Also present:

Roger Dammeier, BZA Alternate  
Neal Blythe, Clear Lake Board of Zoning Appeals Attorney  
Amy Schweitzer, Zoning Administrator and Recorder of the minutes of the meeting

Four out of five members were present.

Mr. Kummer read the introductory comments about the Board of Zoning Appeals before asking Mr. John Riedeman to present his application for a development standards variance.

Mr. Riedeman stated he owns an existing cottage at 126 Chapel Avenue, and he would like to build an addition to the cottage that includes a garage, kitchen, and half bath on the main floor and additional bedrooms and a bathroom upstairs. Riedeman told the Board that the project would allow the cottage to be used year-round. There are two (2) lots involved, but they have been legally combined. He stated that his project would enhance the neighborhood.

Board member David Harris confirmed the project involved only a front yard variance request. Harris asked about the distance from the edge of the pavement. Ms. Brown stated that she had measured thirty-four (34) feet as the distance from the proposed new structure to the edge of the pavement. The Board discussed the existing right-of-way illustrated on the GIS map in the Staff Report. Chairman Ron Kummer stated that under the old ordinance, this project would not require a variance. Mr. Tyler stated that the proposed structure does line up with other homes along Chapel Avenue.

Mr. Harris made a motion to close the regular meeting and open the public hearing. Ms. Brown seconded the motion. Chairman Kummer asked for any public comments for or against the variance request and proposed project from the audience. Board of Zoning Appeals Staff, Amy Schweitzer, stated that a letter in support of the variance had been received from Craig and Pamela Roth of 116 Chapel Avenue. These property owners are directly north of the proposed project. Schweitzer read the letter aloud.

Chairman Kummer asked again for comments from the public. Hearing none, Mr. Harris made a motion to close the public hearing and re-open the regular business meeting. Ms. Brown seconded the motion.

Kummer asked the Board for questions or comments. Ms. Brown asked about the length of the proposed driveway and discussion ensued. With no additional comments from the Board, Chairman Kummer took a preliminary vote before proceeding with the findings of fact for Case #2012-02, a variance from development standards request by John and Pamela Riedeman for 126 Chapel Avenue. Regarding the front yard setback variance, relief from Section 2.12, the Board of Zoning Appeals made the following findings of fact:

**Finding 1:** Legal notice of the application was provided to the Herald Republican Newspaper on March 27, 2012 and published on April 3, 2012. 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. Harris made a motion to accept the finding as presented. Mr. Tyler seconded the motion. Motion carried with four (4) votes in favor and zero (0) votes against.

**Finding 2:** The approval of the variance allowing the proposed addition to encroach into the front yard setback will not be injurious to the public health, safety, morals, and general welfare of the community because there is adequate distance (> 35 feet) between the proposed structure and the edge of pavement to ensure safety of residents and the occupants of the home. Chapel Avenue is only one block long and is unlikely to be expanded in width or expanded to serve additional development. Mr. Harris made a motion to accept the finding as presented. Ms. Brown seconded the motion. Motion carried with four (4) 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 addition will be residential and not impact the residential use of adjacent properties. The proposed addition will increase the size and improve the appearance of the cottage thereby increasing the property value of it and adjacent cottages. Mr. Harris made a motion to accept the finding as presented. Mr. Tyler seconded the motion. Motion carried with four (4) votes in favor and zero (0) votes against.

**Finding 4:** The strict application of the terms of the unified development ordinance will result in practical difficulties in the use of the applicant's property because in order to make use of the existing cottage and provide interior access from the existing portion of the cottage to the new addition, the encroachment into the front yard setback is necessary. Additionally, the encroachment into the front yard setback allows for improved curb appeal of the existing structure. Mr. Harris made a motion to accept the finding as presented. Mr. Tyler seconded the motion. Motion carried with four (4) votes in favor and zero (0) votes against.

After making the necessary findings of fact, Chairman Kummer took a roll call vote for the front yard setback variance for Case #2012-02. Ms. Brown voted to approve. Mr. Harris voted to approve. Mr. Tyler voted to approve. Chairman Kummer also voted to approve. The Board voted, unanimously, to approve the variance as requested without conditions. Mr. Riedemen thanked the Board for their time.

Chairman Kummer asked Mr. Robert (Bob) Adams about his variance modification request. Mr. Adams gave the Board a quick recap about his case. The condition the Board put on granting Mr. Adams' variance was that an Administrative Subdivision be completed before the gazebo was constructed. Mr. Adams agreed to that condition and understood that the gazebo straddling a lot line (between 276 Lakeview Drive and 273 Lakeview Drive) could cause a problem. After looking further into the Administrative Subdivision process, Mr. Adams stated he did not realize it would involve eliminating lake access of the adjacent property, 273 Lakeview Drive (formerly 273 Lake Drive). Adams stated he does not want this property to lose lake access because there is a house on the other side of the street that is part of this property.

Additionally, it was questioned whether an Administrative Subdivision could be completed given the situation. At first glance it did not seem to meet the "Applicable Actions" spelled out in Section 9.17 B.2. of the Town's Unified Development Ordinance. Adams proposed the gazebo being constructed entirely on 273 Lakeview Drive as a solution, but would still need the lake yard setback variance that was granted to 276 Lakeview Drive (formerly 276 Lake Drive).

Chairman Kummer asked about Board member Mr. Tyler participating in this discussion. Mr. Tyler stated that he had participated in the original decision on this case after stating that he was friends with Mr. Adams and offering to reclude himself if anyone believed he could not be unbiased. No one objected to Mr. Tyler participating in the original decision, but Tyler again offered to reclude himself from this discussion if anyone believed he could not remain impartial. No one spoke, so Mr. Tyler remained part of the discussion.

Mr. Harris confirmed that the owners of 276 and 273 were different. Mr. Adams is owner of 276; Mr. Adams and his brother are owners of 273 as "Clear Lake LLC." Discussion ensued about the ownership of the two (2) properties and that the variance was specifically granted for 276 Lakeview Drive (formerly 276 Lake Drive). The Board expressed concern about keeping the variance approvals "clean." Mr. Blythe, the Town Attorney, reminded the Board that a variance for 273 would require new findings of fact, and that the 273 lot was much larger and may be more difficult to justify.

From the audience, Mr. Chris Folland reminded the Board that the purpose of the Administrative Subdivision was to gather functional lots together and to improve the front portion of 273 Lakeview Drive so that it can be used by the occupants of 276 Lakeview Drive was contrary to that purpose.

Mrs. Schweitzer stated that in answering some questions of Board Member Bonnie Brown, Brown had brought up that the lot line could be adjusted under Section 9.17 B.2.c. "Adjusting Lot Lines: The owners of contiguous properties mutually agree to adjust a lot line separating their two (2) properties due to surveyor errors or when the owners mutually desire an adjustment; as long as the adjustment does not result in any new or an escalation in nonconformance, or does not reduce either's lot area by more than twenty percent (20%)." Ms. Brown stated that a cottage cannot be built on the lake front portion of 273 Lakeview Drive, and adjusting the lot line still seems like the best solution.

The Board agreed that under Section 9.17 B.2.c. the lot line could be modified. Adams stated this was the ideal outcome because it also allowed them additional area to relocate the grinder and provide an easement to the grinder. Mr. Adams thanked the Board for their time and clarification of this issue, and stated that he would complete the Administrative Subdivision, modifying lot lines before the gazebo was built.

Under Old Business, Chairman Kummer asked the Board to review the minutes of the February 20, 2012 meeting. Ms. Brown made a motion to accept the minutes as presented. Mr. Harris seconded the motion. Motion carried with four (4) votes in favor and zero (0) votes against.

Regarding the proposed new Rules of Procedure, Chairman Kummer reported that the Rules Committee had met and recommended the proposed Rules of Procedure be accepted as presented. There was some discussion on the new public notice by yard sign and the details of the signs. The Board decided to increase the deposit to \$30 which will be returned to the applicant if the sign is returned. The signs will be ordered through Core Promotions in Angola.

New forms for variances, special exceptions, and administrative appeals were also presented. Mr. Harris asked about the role the Rules of Procedure played, and Mr. Blythe stated that Rules govern the Board of Zoning Appeals procedurally. A judge will look to make sure the Board has followed the rules and the processes outlined in its Rules of Procedure. Ms. Brown asked about the location of the Unified Development Ordinances and the Rules of Procedure on the Town's website. There was discussion about navigating the Town's website.

Mr. Tyler made a motion to approve the Rules of Procedure and forms as presented. Mr. Harris seconded the motion. Motion carried with four (4) votes in favor and zero (0) votes against.

In New Business, Kummer reported that Mr. Folland had resigned from the Board of Zoning Appeals because of he is fulfilling a Town Council seat vacated by Mrs. Sue Williams. Thus, a new Secretary needed to be elected. Mr. Tyler nominated himself to be Secretary, and Mr. Harris seconded that nomination. The Board voted in favor of Mr. Tyler being elected as Secretary of the Board of Zoning Appeals.

There being no additional business, Mr. Tyler made a motion to adjourn the meeting. Mr. Harris seconded the motion. Motion carried; meeting adjourned at 8:07 PM.

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Eric Tyler, Secretary