

Town of Clear Lake - Board of Zoning Appeals Meeting Minutes – October 15, 2012

Board of Zoning Appeals Chairman Ron Kummer opened the October 15, 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
Erin Culler
Roger Dammeier

Also present:

Neal Blythe, Attorney for the Town
Amy Schweitzer, Zoning Administrator and Recorder of the minutes of the meeting

A quorum was present.

Chairman Kummer read the introductory comments about the Board of Zoning Appeals before asking Dr. Todd Rumsey to present his request. Before Dr. Rumsey began his presentation, the Board of Zoning Appeals members introduced themselves.

Dr. Todd Rumsey gave a history of the chain of events that have led him to the Board of Zoning Appeals meeting. He stated that in Spring of 2011, it became apparent that he needed to safely and effectively store the items his family uses at the lake side. After reviewing the Clear Lake Unified Development Ordinance, Dr. Rumsey built a ski locker that was roughly the same cubic feet as his dock box, only it was organized vertically in order to hold skis upright. Rumsey told the Board of Zoning Appeals that he did not believe the ski locker he constructed was an “accessory structure.”

Dr. Rumsey told the Board that Amy Schweitzer, the Town’s Zoning Administrator, met with him about the ski locker and determined the ski locker was an accessory structure. Mrs. Schweitzer sent a letter requesting the ski locker be moved to a location that was consistent with the Unified Development Ordinance. Dr. Rumsey discussed placing the ski locker on his dock with Indiana Department of Natural Resources Conservation Officers, and Conservation Officers told him that the ski locker could be placed on the dock. Rumsey stated the ski locker on his dock was not the solution that the Town of Clear Lake anticipated. As part of his dock, the ski locker would be stored on the sea wall during the off season.

Dr. Rumsey told the Board that Mr. Chris Folland contacted the Indiana Department of Natural Resources about this situation, and their response was that they did not care. In July of 2012, with the ski locker on his dock, Dr. Rumsey found Mr. Folland taking pictures of his dock and the ski locker from Folland’s pontoon boat. Rumsey stated that after that incident, he received a very disturbing letter from the Town.

The letter stated that if he did not remove the ski locker from the dock within so many days, the Town would take him to court and fine him. Dr. Rumsey responded to the letter by asking specifically what part of the Unified Development Ordinance gave the Town jurisdiction over docks and which part of the ordinance addressed what was acceptable and unacceptable on docks.

Dr. Rumsey stated that after some time passed, he received word from the Town, that the Town, indeed, did not have jurisdiction over anything in the water. Rumsey stated basically after sending a nasty, threatening letter, the Town said, never mind.

Rumsey reported that he receive a phone call from a Town Council member asking if he would move the ski locker anyway. Rumsey said he would be willing to apply for a variance to have it on his sea wall, but that the only legal place (that still made it practical) was on his dock. The ski locker does not hinder access to any property – his or adjacent. Pictures Rumsey provided illustrate the ski locker is consistent in color with the siding of his house. Dr. Rumsey stated that the ski locker is as tasteful as he can make it and still accomplish his goals of safely and securely storing his lake necessities without carrying them up three or four stories.

Mrs. Schweitzer reported that it was Plan Commission member Bill Geiger, not a Town Council member, that contacted Dr. Rumsey. She also commented that the threatening letter Dr. Rumsey referenced, was an e-mail, and in her opinion it was pretty toned-down. Schweitzer made a copy of the e-mail available to the Board.

Dr. Rumsey went through the pictures he provided telling the Board that pictures labeled A, B, C, and D are the ski locker. He told the Board that it is on wheels and tips and moves easily. He demonstrated in his pictures (with the assistance of his daughter holding a red broom) that the ski locker is not noticeable to either neighbor. Dr. Rumsey concluded by stating that the ski locker addresses a need at his property and doesn't hurt anyone else. He realizes that the Town does not want to see it on the dock, but as a last resort, he will put it there.

Chairman Kummer welcomed questions from the Board of Zoning Appeals and began by asking if there is storage below the existing deck at the Rumsey property. Dr. Rumsey stated there was not storage under the deck, only the ground and stairs from the previous rendition of the house. The door under the deck just serves as access.

Ms. Brown asked if the ski locker would be left on the sea wall or on the dock in the summer. Dr. Rumsey stated it was his preference to leave it on the sea wall because it is less intrusive there than on the dock. Mrs. Culler asked if the ski locker would be left where it currently is located. Rumsey stated it would be primarily where it is today. If he can get it a little "more snug" up against the hill, then he will do that. Mrs. Culler also commented on how steep the slope is at Dr. Rumsey's property.

There being no additional questions from the Board members, Mr. Dammeier made a motion to close the regular meeting and open the public hearing for Case #2012-04. Ms. Brown seconded the motion. Motion carried with all voting in favor.

Mr. Kummer asked the Zoning Administrator, Amy Schweitzer, if any letters had been received from adjacent property owners. Mrs. Schweitzer stated that e-mails had been received from Peter and Sherry Beck and Neil Federspiel in support of the project. These are both adjacent neighbors. Schweitzer made those e-mails available to the Board.

Chairman Kummer asked for comments from the audience from anyone for or against this project. Mr. Chris Hughes, 824 South Clear Lake Drive, introduced himself and stated that he was in favor of Dr. Rumsey's project. Mr. Hughes stated the ski locker looks good with Rumsey's house, and that living on the hill makes it very tedious and tiring to carry items used on the lake up the hill. Mr. Hughes stated that the locker looks good and makes a lot of sense.

Mr. Gerry McArdle, 294 Prospect Street, stated he was in favor of this project. Mr. McArdle listed the equipment that he put away at the end of Labor Day and stated that almost half of Clear Lake is up two stories from the water to the road, with some properties being as much as three stories. Mr. McArdle asked the Board about the property that has the faux boathouse doors on a lakeside retaining wall, and what would have been the problem if there had actually been storage behind those doors. McArdle stated the Town needed to look at this issue and create some type of modification in the Unified Development Ordinances to permit lake side storage. McArdle told the Board that it made sense, and could fit into the Town's character if done properly. Mr. McArdle told the Board that he actually knew someone that left Clear Lake because of the lack of ability to have lake side storage. McArdle stated that he needed a sponsor from the Plan Commission or Town Council to start the ball rolling on this issue.

Chairman Kummer thanked the audience for their comments, and stated that he was not in favor of granting this variance because it does set precedence. He stated the Board should not be giving an appeal that would encompass what so many other people desire to do.

Dr. Rumsey stated that his case would not set a precedent. He told the Board that anyone else that wants lake side storage can go through the appeal process. Rumsey said his case sets a clear message that if it is reasonable and not harmful to anyone than maybe it is acceptable on a case-by-case basis. He reminded the Board that his neighbors still have an unencumbered view of the lake, and they (the neighbors) have testified to that.

Bob Lewis, 362 East Clear Lake Drive, identified himself and stated that storage under a deck might be a solution for lake side storage on properties that have a large hill.

Mr. Dammeier agreed with Dr. Rumsey about setting a precedent, stating that every time a case came before the Board of Zoning Appeals, the Board would have to turn it down for that same reason. Dammeier stated that every case is looked at on an individual basis.

Mr. McArdle stated that folks are allowed to cover their lifts all the way down to the dock and nothing obstructs the view more than boats and lifts.

Mr. Hughes stated that anyone that wanted to have lake side storage could apply for a variance just as Dr. Rumsey has.

There being no additional comments from the audience or discussion involving the audience, Mr. Dammeier made a motion to close the public hearing and reopen the regular Board of Zoning Appeals meeting. Ms. Brown seconded the motion, and the motion carried with four (4) votes in favor.

Ms. Brown stated that there is a process in place for case-by-case circumstances. She stated there are provisions in place to control this type of storage, and Mr. Dammeier agreed.

There being no additional discussion, Chairman Kummer took a trial vote. After the trial vote, Ms. Brown proposed a condition that the ski locker should not be made larger without the Board of Zoning Appeals approval. The Board agreed the condition seemed logical.

Chairman Kummer proceeded with the findings of fact for Case #2012-04, a variance from development standards request made by Todd Rumsey for 814 South Clear Lake Drive. The request is for relief from Section 5.08 AS-05 E. Location of Accessory Structures (Variance A) and Section 5.21 EN-01 D. Environmental Feature Protective Setback (Variance B).

For Variance A, Section 5.08 AS-05 E, Location of Accessory Structures, Chairman Kummer suggested the "HAS" finding and read it aloud:

Finding A1: *Legal notice of the application was provided to the Herald Republican Newspaper on September 24, 2012 and published on October 2, 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.*

All voted in favor of the finding as presented.

Chairman Kummer suggested, based on the trial vote, the "WILL NOT" finding and read it aloud:

Finding A2: *The approval of the variance allowing the applicant to install a storage-based accessory structure (ski locker) on the seawall will not be injurious to the public health, safety, morals, and general welfare of the community because the ski locker has no impact on public health, safety, morals, and general welfare of the community. Installation of the ski locker does not impact runoff as it is proposed to be located on the existing concrete seawall. The ski locker will not impact any safety related issues as there will be no blocking of views or pathways.*

Ms. Brown, Ms. Culler, and Mr. Dammeier voted in favor of the finding as presented. Chairman Kummer voted against the finding.

Chairman Kummer suggested, based on the trial vote, the "WILL NOT" finding and read it aloud:

Finding A3: *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 installation of the proposed storage-based accessory structure (ski locker) has no impact on the use of adjacent properties. These areas are residential and will continue to be so. The proposed ski locker is small and located at a significantly lower elevation than the homes in this area resulting in unobstructed views from those homes.*

Ms. Brown, Ms. Culler, and Mr. Dammeier voted in favor of the finding as presented. Chairman Kummer voted against the finding.

Chairman Kummer suggested, based on the trial vote, the “WILL” finding and read it aloud:

Finding A4: *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 changes in elevation over this lot make storage of lake toys challenging.*

Ms. Brown, Ms. Culler, and Mr. Dammeier voted in favor of the finding as presented. Chairman Kummer voted against the finding.

Chairman Kummer took a roll call vote for the approval of Variance A, relief from the Location of Accessory Structures, with the condition that the storage-based accessory structure (storage locker) not be increased in size without the approval of the Board of Zoning Appeals. Ms. Brown voted to approve with the condition as stated. Ms. Culler voted to approve with the condition as stated. Mr. Dammeier voted to approve with the condition as stated. Chairman Kummer voted to deny.

Variance A: Section 5.08 AS-05 E. Location of Accessory Structure is approved and granted with the condition that the storage-based accessory structure (storage locker) not be increased in size without the approval of the Board of Zoning Appeals.

For Variance B, Section 5.21 EN-01 D. Environmental Feature Protective Setback, Chairman Kummer suggested the “HAS” finding and read it aloud:

Finding B1: *Legal notice of the application was provided to the Herald Republican Newspaper on September 24, 2012 and published on October 2, 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.*

All voted in favor of the finding as presented.

Chairman Kummer suggested, based on the trial vote, the “WILL NOT” finding and read it aloud:

Finding B2: *The approval of the variance allowing the applicant to install a storage-based accessory structure (ski locker) on the seawall will not be injurious to the public health, safety, morals, and general welfare of the community because the ski locker has no impact on public health, safety, morals, and general welfare of the community. Installation of the ski locker does not impact runoff as it is proposed to be located on the existing concrete seawall. The ski locker will not impact any safety related issues as there will be no blocking of views or pathways.*

Ms. Brown, Ms. Culler, and Mr. Dammeier voted in favor of the finding as presented. Chairman Kummer voted against the finding.

Chairman Kummer suggested, based on the trial vote, the “WILL NOT” finding and read it aloud:

Finding B3: *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 installation of the proposed storage-based accessory structure (ski locker) has no impact on the use of*

adjacent properties. These areas are residential and will continue to be so. The proposed ski locker is small and located at a significantly lower elevation than the homes in this area resulting in unobstructed views from those homes.

Ms. Brown, Ms. Culler, and Mr. Dammeier voted in favor of the finding as presented. Chairman Kummer voted against the finding.

Chairman Kummer suggested, based on the trial vote, the “WILL” finding and read it aloud:

Finding B4: *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 changes in elevation over this lot make storage of lake toys challenging.*

Ms. Brown, Ms. Culler, and Mr. Dammeier voted in favor of the finding as presented. Chairman Kummer voted against the finding.

Chairman Kummer took a roll call vote for the approval of Variance B, relief from the environmental feature protective setback, with the condition that the storage-based accessory structure (storage locker) not be increased in size without the approval of the Board of Zoning Appeals. Ms. Brown voted to approve with the condition as stated. Ms. Culler voted to approve with the condition as stated. Mr. Dammeier voted to approve with the condition as stated. Chairman Kummer voted to deny.

Variance B: 5.21 EN-01 D. Environmental Feature Protective Setback is approved and granted with the condition that the storage-based accessory structure (storage locker) not be increased in size without the approval of the Board of Zoning Appeals.

Dr. Rumsey thanked the Board of Zoning Appeals.

Chairman Kummer asked the Board for comments on the meeting minutes from the August 20, 2012 meeting. Ms. Brown made a motion to accept the minutes as presented. Mr. Dammeier seconded the motion. Motion carried with four (4) votes in favor.

Chairman Kummer stated that the Board needed a Vice-chairman. When Mr. Harris resigned from the Board of Zoning Appeals, his position as Vice-chairman was not filled. Mr. Kummer nominated Ms. Brown to be the Vice-chairman of the Board of Zoning Appeals. Mr. Dammeier seconded the motion. There being no other nominations, a vote was taken. Motion carried with four votes in favor of the motion.

There being no additional business, Mr. Dammeier made a motion to adjourn the meeting. Mr. Kummer seconded the motion. Motion carried; meeting adjourned at 7:40 PM.

Ron Kummer, Chairman