

**Town of Clear Lake - Board of Zoning Appeals
Meeting Minutes – December 15, 2014**

Chairman Bonnie Brown opened the December 15, 2014 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:

Bonnie Brown, Chairman
Roger Dammeier, Vice Chairman
Ron Walters
Ken Wertz
John Wilhelm

Also present:

Amy Schweitzer, Zoning Administrator and Recorder of the minutes of the meeting
Michael Hawk, Town Attorney

Chairman Brown determined a quorum was present. Ms. Brown read the Board's introduction that identifies membership requirements and primary duties of the Board of Zoning Appeals before announcing the Board would be hearing *Case #2014-03, An Application for a Development Standards Variance*, filed by Rebecca Terreo on behalf of Charles A. Lord, for the property at 732 South Clear Lake Drive. Ms. Brown stated the variance request was from *Section 2.14, Minimum Lake Yard Setback* and *Section 5.21* G. 2.b., Deck Setback Exceptions*. (*Section 5.21 was later corrected to be 5.15 G.2.b.)

Mr. David Terreo introduced himself as Rebecca Terreo's husband and the son-in-law of Charles A. Lord. Mr. Terreo thanked the Board for hearing their request and Staff Schweitzer for assisting them with the application process. Mr. Terreo stated the initial plan was to remodel the existing cottage. He told the Board that the original platted road right-of-way went through their lot and it had to be vacated so they could build toward the street. In exchange for vacating the road right-of-way, the Terreo's (on behalf of Mr. Lord) signed a Grant of Perpetual Easement to the Town that actually granted the Town a permanent easement where the existing asphalt road exists.

Mr. Terreo continued by telling the Board that Mr. Lynn Delagrange had been working with them, and permits were pulled in October to renovate the existing cottage. After starting the interior demolition, Mr. Delagrange discovered the foundation for the existing cottage was virtually non-existent. The original cottage on that site burned in the 1960s, and the cottage was rebuilt and cantilevered out from the original foundation. Terreo stated there was no support underneath the cottage today. He stated issues with the sills across the door thresholds were the first indication that there was a problem.

Mr. Terreo told the Board that the property was owned by Charles A. Lord, his father-in-law. Mr. Lord is a World War II Veteran that actually fought in the Battle of the Bulge. The goal of the project is to create a bathroom and entrance that is ADA compliant so Mr. Lord can access the cottage.

Mr. Terreo recapped saying they got the road vacated, started demolition, and then a cost-benefit analysis showed building new would be a better use of resources. This has brought them to where they are today, applying for a variance from the minimum lake yard setback. Mr. Terreo explained that 734 South Clear Lake Drive, the property to the west, has two houses on it. Because the house closest to them is so far back off the road, it would push their new house back toward the street. Terreo explained their intention was to replace the existing building and deck, adding a walkout basement. Terreo stated there were two advantages to building new: it would allow for a place to go during a storm; and the utilities could be put down in the basement. Mrs. Rebecca Terreo added that the new cottage would be shifted to meet the 5-

foot minimum side yard setbacks, as the current cottage does not. The Terreo's added that their builder recommended tearing the existing cottage down and starting new for safety purposes, stating he could not adequately build up the foundation while the existing cottage was standing. Mr. Delagrange was not able to attend the meeting, but was available via cell phone if there were any questions for him.

Chairman Bonnie Brown asked the Board for questions. Board Member John Wilhelm asked about a new well. Mr. Terreo stated a new well would be drilled on the garage lot, and the existing well would be capped. Terreo confirmed they would bore under the road to get the water lines to the house. There was discussion about the existing pump and well location. There was discussion about portions of the new cottage, the use of ramps for access, and the stairs that provide access up the hill on the lot.

Chairman Brown asked if the new deck would be at the same elevation as the existing deck. Terreo stated it would, and would actually have the cable railing around it.

With no additional questions or comments from the Board, Mr. Dammeier made a motion to close the regular meeting of the Board of Zoning Appeals. Mr. Wertz seconded the motion. Motion carried with all in favor. Mr. Dammeier made a motion to open the Public Hearing; Mr. Walters seconded the motion. Motion carried with all in favor.

Chairman Brown asked for comments from the public for or against the variance request. Hearing none, Staff Schweitzer read aloud an email from Sara Ayres-Craig, the owner of the adjacent property to the east. Her email said, she "had absolutely no problem with the Town granting the Lords a variance so that they can rebuild where the cottage is now."

With no additional public input, Mr. Dammeier made a motion to close the Public Hearing. Mr. Wilhelm seconded the motion. Motion carried with all in favor. Mr. Dammeier made a motion to open the regular meeting; Mr. Wilhelm seconded. Motion carried with all in favor.

Chairman Brown asked if a sample vote was necessary; the Board conveyed that sample ballots were not necessary. Board member Mr. Wilhelm asked to discuss a couple of things, particularly to protect the owner to the west who is not present. Wilhelm asked the Board why the Terreo's should be allowed to use an alternative to the Established Building Setback line. The Board discussed the limitations of the adjacent home that was built back off the lake (and close to the road), and the fact that nothing is going to change for them if the Terreo's rebuild using the lake yard setback of their existing house.

Staff Schweitzer stated the adjacent owner to the west had received several notifications of activity on the Lord/Terreo property including a certified letter when the right-of-way was vacated; a courtesy notice when the ILP was issued in October, and a second certified letter for the variance.

Schweitzer told the Board that in July, the builder contacted her about the Established Building Setback line for this property and since the back house (house to the west built close to the street) had its own independent sewer connection and it is "adjacent to the subject property" it had to be used as the endpoint for the Established Building Setback Line. Schweitzer stated that this adjacent house really did not have a lake yard, but rather an access strip.

With no further comments or questions, Chairman Bonnie Brown proceeded with the Findings of Fact for *Case #2014-03, An Application for a Development Standards Variance*, filed by Terreo/Lord for 732 South Clear Lake Drive. The variance is for relief from *Section 2.14 Minimum Lake Yard Setback*, and *Section 5.21*.G.2.b. Deck Setback Exception*. (*Section 5.21 was later corrected to be 5.15 G.2.b.)

Finding 1: Legal notice of the petition has been provided in accordance with Indiana Code and Notice has been made to appropriate land owners because (a) Legal notice of the application was published in the Herald Republican Newspaper on December 1, 2014; and (b) 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. Dammeier made a motion to accept Finding 1 as presented. Mr. Wertz seconded the motion. With no discussion, motion carried with five voting in favor and zero voting against the motion.

Finding 2: The approval of the variance will not be injurious to the public health, safety, morals and general welfare of the community because (a) The proposed project will create a structure that is nearly identical at the lake yard (except it meets the side yard setbacks) to what exists today; there will be no impact on visibility or access to public streets or to the lake; and (b) The proposed project includes shifting the structure to meet the side yard setbacks required by the Unified Development Ordinance.

Mr. Dammeier made a motion to accept Finding 2 as presented. Mr. Walters seconded the motion. With no discussion, motion carried with five voting in favor and zero voting against the motion.

Board member Wilhelm questioned the Section 5.21. G.2.b. After some discussion it was concluded that the correct section number for Deck Setback Exceptions is Section 5.15 G.2.b. After hearing the wording of the Legal Notice, Attorney Mike Hawk stated the numerical error had no impact on the hearing or notice of the hearing, and encouraged the Board to continue with the Findings of Fact.

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) The use of adjacent property as residential will not change or be impacted as a result of this project; and (b) The proposed project will be an entirely new structure, constructed of high-quality materials and using modern methods thereby increasing the property value of this property and adjacent properties.

Mr. Dammeier made a motion to accept Finding 3 as presented. Mr. Wertz seconded the motion. Mr. Wilhelm suggested adding *(c) the building will be built on substantially the same footprint on the lake side and neighbor views will not be changed.* After some brief discussion, Mr. Dammeier amended his motion to include the suggested language.

Finding 3 Amended: 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) The use of adjacent property as residential will not change or be impacted as a result of this project; (b) The proposed project will be an entirely new structure, constructed of high-quality materials and using modern methods thereby increasing the property value of this property and adjacent properties; and (c) The building will be built on substantially the same footprint on the lake side and neighbor views will not be changed.

Mr. Wertz seconded the amended motion. With no discussion, the amended motion carried with five votes in favor and zero against.

Finding 4: The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because (a) The established building setback line is pulled substantially back toward the street by a house that only has an “access strip” to the lake, rather than an actual lake yard. That same house is built on half of a lot; and (b) The proposed project lines up with existing structures that actually have a lake yard, and helps create an established building setback that roughly follows the shoreline (which actually curves out, not back toward the street).

Mr. Dammeier made a motion to accept Finding 4 as presented. Mr. Wilhelm seconded the motion. With no discussion, motion carried with five voting in favor and zero voting against the motion. Mr. Dammeier made a motion to approve *Case #2014-03, An Application for a Development Standards Variance*, filed by Rebecca Terreo on behalf of Charles A. Lord for 732 South Clear Lake Drive, as requested. Mr. Walters seconded the motion. Motion carried with all in favor.

In Old Business, Chairman Brown asked if the Board had reviewed the minutes of the October meeting. Mr. Dammeier made a motion to approve the minutes from the October 20, 2014 meeting as presented. Mr. Walters second the motion. Motion carried with four votes in favor and zero against. Mr. Wilhelm abstained from the vote as he did not attend the October 20 meeting.

In other Old Business, Chairman Brown introduced a change to the “Instructions for Applying for a Development Standards Variance” stating she liked the change. Schweitzer told the Board the change was made on the instructions for *development standards* variances and the instructions for *use* variances. Mr. Wilhelm made a motion to accept the modification to the “Instructions” as presented. Mr. Dammeier seconded the motion. Motion carried with all in favor.

Mr. Wilhelm suggested that in the future, a detailed site plan should be required from the builder/applicant showing all setbacks and distances from lot lines, rather than having the Board scale these from a survey.

There being no other business, Chairman Brown stated the next meeting would be February 16, 2015 with the deadline for issues requiring publication being January 19, 2015. Mr. Dammeier made a motion to adjourn. Mr. Wertz seconded the motion. Motion carried; meeting adjourned at 7:35 PM.

Amy Schweitzer, Secretary