

Town of Clear Lake - Board of Zoning Appeals Meeting Minutes – March 23, 2015

Chairman Bonnie Brown opened the March 23, 2015 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
Don Luepke
Tom Schmidt, Alternate
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 Introductory Comments that identifies membership requirements and primary duties of the Board of Zoning Appeals. Brown continued by noting both cases on the agenda are difficult and Board members have spent hours reviewing the submissions and visiting the project sites. Chairman Brown read aloud Section 1.08A from the Town's Unified Development Ordinance, "*Minimum Requirements: The provisions of this Unified Development Ordinance are the minimum requirements necessary for the protection of the health, safety, comfort, morals, convenience, and general welfare of the people at large.*" Brown also drew the Board and audience's attention to Policy 1.2 in the 2013 Update to the Comprehensive Plan which states, "Ensure that future development does not create traffic safety or traffic congestion problems for local roads;" and Policy 7.2, "Ensure land use regulations have sufficient flexibility to allow property owners and the Town to propose measures to adapt development to unique and difficult site conditions, preserve open space and natural resources, and avoid negative impacts on surrounding properties."

Chairman Brown introduced Variance Application #2015-01, filed by Robert McMaster at 100 Clear Lake Cove. The variance request is from *Section 2.16 Minimum Front Yard Setback*. Chairman Brown stated that Mr. McMaster would like to build a detached garage on the garage lot of 100 Clear Lake Cove. This is a corner lot with street frontage on both South Clear Lake Drive and Clear Lake Cove. Mr. McMaster is requesting a variance from the 30-foot front yard setback on the South Clear Lake Drive side of the property, *Section 2.16 Minimum Front Yard Setback*.

Robert McMaster, 100 Clear Lake Cove, introduced himself stating he and his wife were new homeowners on the lake. McMaster told the Board that 100 Clear Lake Cove and the back lot are part of a larger subdivision that was replatted. At that time, the back lot was granted a variance to allow construction of a garage. Essentially, he is applying for the same variance at this point in time. McMaster stated there are a lot of details in the filing, but he is requesting a 10-foot on the South Clear Lake Drive side as opposed to the required 30-foot setback. Mr. McMaster stated that the garage will be constructed with the same materials as their home. The garage will also visually screen the storage buildings located further west along South Clear Lake Drive from his view. McMaster concluded by stating his immediate neighbors have provided letters of support for the project.

Chairman Brown asked McMaster to further described project to audience. Mr. McMaster stated the proposed garage would be 24-feet 8-inches wide and up 45-feet long, adding that he doubts if he will build it that long. The driveway entrance will be off of Clear Lake Cove. The exterior materials will include hardy board siding, stone trim, and the same materials of the residence.

Chairman Brown thanked Mr. McMaster and asked the Board if they had any questions for Mr. McMaster. Member Don Luepke asked about the drainage from the project. Gregg Richhart of Star Homes introduced himself as the builder for this project. He stated that some of the water will drain to the west, as it currently does. Any water that goes east, will go across the road and to the catch basin that is on Mr. McMaster's residential lot. Mr. Luepke commented that the garage lot was not level and asked how the structure would accommodate that. Richhart stated that a crawl space wall will be built around the perimeter, and the existing grade would be similar. Luepke followed up by asking about the height of the crawl space wall, and Richhart estimated the rear (west) wall would be build up 24 to 30-inches, but that wall would be covered with siding and stone.

Chairman Brown asked Mr. McMaster what he intends to store in the garage. McMaster stated a boat, wave runner, car, and any overflow miscellaneous items. There was some discussion about size of the garage, specifically the width. McMaster confirmed that there would be an outdoor spigot and no water inside the building.

There was additional discussion about drainage. Staff Schweitzer read aloud Section 5.22.E. from the Unified Development Ordinance which states, "*Stormwater Management: Every site and development shall be designed, constructed, and maintained to control runoff, prevent flooding, and protect water quality. The particular facilities and measures on-site shall reflect the natural features of the site, the potential for on-site and off-site flooding, water pollution and erosion; and the size of the site.*" Schweitzer also read aloud from the Driveway Standards, Section 5.20.D.1. "*Driveway Runoff: Runoff from a driveway shall not be directed to the Town's streets, but shall be directed to a new or existing catch basin; to the subject property's yard; or other means approved by the Zoning Administrator.*"

Brown asked about the existing stop/no outlet sign. Mr. Richhart commented that the signs would not be in the way, or if the signs are in the way, the driveway could be modified to go straight out to Clear Lake Cove rather than to curve to the south. Staff Schweitzer stated that she had asked Town Superintendent Bob Hull about the signs, and he said he could move the sign if needed. Richhart commented that they would work with the Town on the sign issue.

There was clarification on the location of the existing catch basin being on Mr. McMaster's lot where his home was built. Additional discussion on drainage ensued.

Board member Ken Wertz stated that the proposed building is beautiful. Wertz mentioned that he has been a driver's training instructor for 35 years, and he's been trying to visualize what this building is going to look like if a driver is coming up to that stop sign. Mr. Richhart told Wertz and the Board that Article 5 in the Unified Development Ordinance addresses Vision Clearance Standards, and the proposed building is way behind the required vision clearance line. Wertz expressed concern about seeing to the right (west). Mr. McMaster stated that he does not want to build anything that is unsafe, and that when he stops at the intersection, he can see around the proposed building stake, all the way to 700 East. Mr. Wertz followed up by saying the left (east) turn would be more dangerous because of not being able to see oncoming traffic from the west.

Board Member John Wilhelm asked if the garage would be seasonal or actively used in the summer. Mr. McMaster stated that he intended to use it year round, storing boat trailers in the summer. He also mentioned that he would like to leave at least one car at the lake. Mr. McMaster stated that he does not live at the lake fulltime and doesn't have immediate plans to do so, but the house was built so they could.

Mr. Wilhelm asked about looking for storage options elsewhere. Mr. McMaster stated he relied on the “variance” when he bought the lot. Wilhelm told McMaster that it was not a variance, it was a condition that the Plan Commission put on the plat. Wilhelm went on to ask why the 10-foot plat condition wasn’t researched further commenting that the builder used the current rules when the house was built. McMaster asked what changed from when the 10-foot was originally granted. McMaster added that his realtor said it was good; his builder said it was good. He even ran it through a real estate attorney asking why he has to go through this, and the real estate attorney told him he probably doesn’t need to.

Mr. Wilhelm asked if a smaller garage could work for him. Mr. McMaster stated a smaller garage would not work very well. There was discussion about compromise and what would work on this lot.

Board member Don Luepke stated that this was a unique situation with a corner lot, and he finds reducing the required 30-foot front setback on South Clear Lake Drive to 10-feet troublesome. Luepke commented that all of the other storage buildings along South Clear Lake Drive located west of this lot meet the 30-foot setback. McMaster stated that he had told the Days if his garage stuck out (closer to Clear Lake Cove) than theirs, he would move it back. Luepke stated there is a 30-foot setback for a reason, and there are two other issues with the lot: it does not meet the minimum lot width nor does it meet the minimum lot area. Staff Schweitzer stated that variances were not required for the minimum lot width and the minimum lot area. Those two factors simply make the lot a nonconforming lot, and a nonconforming lot can be built upon as long as the building meets the requirements of the Unified Development Ordinance. In this case, the proposed building meets all of the requirements of the Unified Development Ordinance except the Minimum Front Yard Setback on the South Clear Lake Drive side.

Chairman Brown stated that the questions from the Board have been good, but she asked about moving on to the Public Hearing portion of the meeting. Brown entertained a motion to close the regular meeting and open the Public Hearing. Mr. Wilhelm made a motion to close the regular meeting and open the Public Hearing. Mr. Luepke seconded the motion. Motion carried with all voting in favor.

Nancy Covell of 112 Clear Lake Cove introduced herself and stated that this was a tough way to meet her neighbor. She expressed concerns of safety. The intersection of Clear Lake Cove and South Clear Lake Drive is on a slight hill. Mrs. Covell stated it is difficult to see both ways, especially if landscaping is installed. Mrs. Covell expressed concern about snow removal stating that plowed snow ends up on this lot. Mr. McMaster stated that any landscaping would be small. Chairman Brown stated the landscaping requirements included two canopy trees and three shrubs. There was discussion about the location of the required landscaping. Mr. McMaster stated that he would not be clearing snow from the driveway in front of the garage so there would be a place for snow to pile up.

Brent Schlosser of 110 Clear Lake Cove introduced himself and began by stating one of the goals of spending valuable time and funds on the Unified Development Ordinance was to reduce the number of variances being granted. Mr. Schlosser stated this situation is pinning neighbor against neighbor, and he commented that he’s disappointed that this is how he has to meet a neighbor. Mr. Schlosser stated that his main concern is safety adding that his mom lives on Clear Lake Cove full time. One day, Schlosser stated, he hopes to have kids, and at that time strollers and bikes in this area will be a big concern. Schlosser commented that McMaster even presented the building as “a visual screen to the view of the storage buildings,” but that visual screen is also going to impact the visibility of traffic. Schlosser continued by expressing concern for strollers, kids on bikes, lawsuits against the Town, and even the potential for damage to the proposed garage from snow removal or pavement breaking away from the street – similar to what happened recently to a neighbor’s mailbox.

Mr. McMaster stated that if the stop sign is obeyed, there is not a visual issue; traffic coming down South Clear Lake Drive is visible.

Mrs. Evelyn Schlosser, 110 Clear Lake Cove, stated that it is very difficult to get up that hill, particularly in her car that does not have four-wheel drive. If water is going to drain across the road, it is going to get icy and make things even worse.

Bruce Spangler of 222 West Clear Lake Drive introduced himself. He stated that he's driven down and back and could see the orange stake marking the building corner. He commented that having a wall in that location would affect the view to the west. He asked about moving the proposed garage to the west. Mr. Spangler also suggested making the intersection a three-way stop, commenting that folks drive around the curve in South Clear Lake Drive way too fast.

Mr. McMaster stated he is less concerned with the depth of the garage than he is with the width. He again brought up the idea of moving it back (west) to be more in line with the Day's existing garage.

Mr. Derrold Covell of 112 Clear Lake Cove stated he has lived at the lake for 41 years, and has known that someday building on that corner would be an issue. He commented that he owns two storage buildings on Clear Lake Cove and is a past BZA member so he knows what the members are going through and trusts that the Board will come to the correct decision. Continuing, Mr. Covell stated that it is an elevated intersection and he's had a couple of close calls with cars coming around the curve (on South Clear Lake Drive) to the left. He also commented that the streets are busy with pedestrians as well.

Mr. Covell stated that anytime building occurs there are going to be elevation changes. There is already a low spot that causes issues further north on Clear Lake Cove. Mr. Covell stated that water is not going to jump the road and go to the catch basin. Mr. Covell also expressed concern that the proposed garage is very large, length-wise, at 48-feet. And, the proposed garage will probably be two-feet higher in the back because of the grade change making drainage a real concern. Mr. Covell concluded by stating his biggest concern was safety.

Chairman Brown asked for other comments from the public. Hearing none, Brown asked Board Member Ken Wertz to read aloud the letters that have been received concerning the project. Mr. Wertz read the following letters.

- Dean and Rosie Day, 102 Clear Lake Cove, have a favorable opinion of the project.
- Richard Ameter, 1124 South Clear Lake Drive, has no problem with the project.
- Dan and Karen Hoagland, 1121 South Clear Lake Drive, are willing to support the project.

An additional letter had been received since the BZA packets were made available. Chairman Brown asked Staff Amy Schweitzer to read that letter aloud.

- Jim and Joann Stanley, 116 Clear Lake Cove, object to the project citing the following reasons: pole barns on South Clear Lake Drive all had to meet the 30-foot setback; large size of the building; traffic and safety concerns; and it was their understanding that the lot was not buildable.

Chairman Brown asked for public comments one last time. Hearing none, she entertained a motion to close the Public Hearing and re-open the regular BZA meeting. Mr. Luepke made a motion to close the Public Hearing and re-open the regular meeting. Mr. Wilhelm seconded the motion. Motion carried with all in favor.

Chairman Brown asked for discussion among the Board Members. Mr. Wilhelm reiterated that McMaster has shown a willingness to move the garage west, but noted the 20-foot setback at the west property line. Therefore, the garage would need to be made shorter. Wilhelm stated he wanted to find a compromise because of all the concerns that have been expressed. Wilhelm asked the Board's Attorney, Michael Hawk, to elaborate on the plat condition. Mr. Hawk stated the Unified Development Ordinance is the

zoning law. In this case, both the plat condition and the zoning law apply. The zoning law is more restrictive. Hawk stated that by his understanding, no actual variance had been granted; it was simply a condition of the plat.

Wilhelm suggested making the garage shorter because it would result in less runoff; visibility around the corner would be better; and it would be more similar to the Day's garage. Mr. Wilhelm expressed the desire to work with Mr. McMaster in developing a solution. He suggested that there were storage options elsewhere – including on Clear Lake Cove – and smaller configurations for the proposed garage. Wilhelm told the Board that the distance from the pavement (of South Clear Lake Drive) to the proposed building was 15 ½ to 16 feet, which he thought was reasonable.

Chairman Brown asked if the proposed building would have gutters, and suggested those gutters run into a new catch basin on this lot. There was additional discussion about drainage. Mr. Richhart agreed that making the building smaller would reduce the runoff and suggested a dry well across the back (west) edge of the property that could be filled with stone.

Chairman Brown stated she would like to see the width of the proposed building reduced by five-feet; the proposed building moved north, toward the Day's property, so that it is parallel to the north property line; and moved to the west. Mr. McMaster stated that reducing the width changes the utility of the building. There was discussion about garage and garage door widths.

Mr. Luepke stated that he still had problems with the setback; everyone else is 30-feet off of South Clear Lake Drive. Luepke commented that maybe the lot is not buildable. Lake property owners need to consider themselves stewards of the land. Luepke suggested a garden for the lot and concluded that nothing should be built on it. In response, Mr. Wilhelm stated that not allowing anything to be built on the lot might be considered a taking of the property and recommended working toward a compromise. There was additional discussion about general garage width, boat size, etc.

Board member Tom Schmidt stated that he believed at least all three issues that have been brought up needed to be addressed. Those issues were size of the garage (making it smaller); leaving a larger than 10-foot setback on the South Clear Lake Drive side; and drainage. Schmidt commented that all of those that expressed concerns are fulltime residents.

Given the discussion, Mr. McMaster expressed concern about where two trees would be planted, and suggested maybe a variance from the Landscape Standards should be considered.

Mr. Wertz stated that he doesn't look at the Town's streets as roads; they really are gigantic sidewalks. He suggested McMaster go back to the drawing board. McMaster stated that he was under the clear understanding that he could put a full two-car garage on that lot when he bought it. He stated the Unified Development Ordinance did not change the setback requirements and asked what was different now.

Again, the Board suggested the garage be made parallel to the north property line; made smaller; moved back to the west; increase the setback from South Clear Lake Drive; and drainage be better addressed. Chairman Brown expressed empathy towards Mr. McMaster for the resistance, but entertained a motion to table Case #2015-01 a request for Development Standards Variance made by Robert McMaster. Mr. Wertz made a motion to table Case # 2015-01. Mr. Schmidt seconded the motion. Motion carried with five votes in favor and zero against.

Chairman Brown announced the Board would take a five minute break before proceeding.

Upon returning, Chairman Brown introduced Variance #2015-02, filed by Richard and Kristine Gartner of 253 West Clear Lake Drive. Mr. and Mrs. Gartner would like to add to their existing cottage at 253 West Clear Lake Drive. The proposed addition encroaches into the Minimum Street Yard Setback and the Minimum Lake Yard Setback, which is the established building line. The Gartner's are requesting a variance from *Section 2.14 Minimum Street Yard Setback* and a variance from *Section 2.14 Minimum Lake Yard Setback*.

Before moving forward, Alternate Board Member Tom Schmidt recused himself stated he would be sitting this case out, as he lives directly across the street from the Gartner's. He moved to the audience.

Mr. Rick Gartner of 253 West Clear Lake Drive introduced himself and those seated around him: his wife, Kris; their architect Lisa Weaver from Martin-Riley; and their builder Mike Ley. Mr. Gartner stated that they purchased the property 2 ½ years ago with the intentions of it being a summer cottage, but have fallen in love with lake life and wish to become fulltime residents. They need additional accommodations to make it happen, though. They would like to make their garage larger, just over 600 square feet. The garage houses the laundry room as well. Gartner explained that most of their building goes up, making use of the existing footprint as much as possible while still keeping it under 35-feet and 2 ½ stories. The upper half story will be a master bedroom. Gartner stated the plans also call for an elevator. In conclusion, Mr. Gartner stated that they are asking to extend the garage out towards the street an additional 6-feet and widen the garage by 5-feet. The corner that encroaches will be the location of the proposed elevator. Currently, the garage is 21½-feet by 19-feet wide. The Round Lake side of the home includes a balcony off the master bedroom. This is the lake side encroachment. Gartner noted the existing footprint already encroaches. Mr. Gartner also noted that the materials will match all of the existing materials: metal roof; maintenance free siding; field stone.

Mrs. Kris Gartner stated that the elevator was for safety issues, as well as accessibility. She told the Board that the interior stairwell is very narrow and difficult to maneuver if carrying anything.

Mr. Luepke asked about accessing the elevator through the garage. The Gartner's confirmed ground level access would be through the garage, and the elevator would have three stops. The existing exterior staircase to the deck moves out (to the west).

Mr. Wilhelm asked if they had considered different locations for the elevator. Mrs. Lisa Weaver, architect, stated the elevator has been located three different places, but the proposed location has been the best. Wilhelm asked about expanding toward their adjacent lot, and Mrs. Weaver stated that they began by looking at that lot for the location of a main floor garage with a master suite above. It quickly became apparent that variances would be necessary there as well.

There was discussion about design alternatives: second floor cantilevering over the garage; concerns about parking area in the driveway; making the garage parallel to the street; a stairwell labeled "future" on the plans, etc. Mrs. Gartner stated they really wanted to retain the integrity of the home as it is one of the earlier ones on the lake. They want to maintain the "quaintness" of it, but at the same time, they want to make sure they can accommodate their growing family – as the number of their grandchildren increases!

Mr. Luepke commended the Gartner's for thinking about green space. His biggest concern is parking and the close proximity to the road. Luepke called the road ridiculously narrow stating there is no way two cars could pass one another without going into someone's driveway. Mr. Gartner mentioned his stone mailbox and that even after the proposed project is completed, four cars can park on their driveway, with an additional two in the garage. Luepke asked if the Town was going to do something to make the road more travelable.

Mrs. Gartner added that anywhere around the lake, one car has to pull over if another car is coming. That is part of the quaintness of the lake.

Chairman Brown asked if the existing concrete driveway would remain, and expressed concern about it being a short driveway. The Gartner's responded yes, the existing driveway would remain. Would the large tree remain? Yes. Brown asked about the utility pole near Tom Schmidt's garage. Yes, it will remain where it is as well.

Mr. Wilhelm expressed concern about the footings/foundation not supporting the weight of the addition. Wilhelm asked about core samples and stated that their beloved tree might be lost if deep footings are required. The Gartner's stated they were awaiting this variance approval before moving forward with core samples.

Chairman Brown asked the Board about the lake side balcony, and no concerns were expressed.

With no additional questions from the Board, Chairman Brown entertained a motion to close the regular BZA meeting and open the Public Hearing. Mr. Wertz made a motion to close the regular BZA meeting and open the Public Hearing. Mr. Luepke seconded the motion. Motion carried with all in favor.

Chris Folland introduced himself as a member of Clear Lake Town Council stating that he represents the Town of Clear Lake along with Roger Dammeier. Folland stated that during the March 9 Town Council meeting, the Council discussed and vote regarding this matter. As a matter of background, Folland told the Board that in 2000, Steuben County tried to give the Town the bridge. There was talk about what was going to happen to that part of West Clear Lake Drive. There has been ongoing discussion that the road is failing and what is going to be done to improve the road. In 2012, the Town commissioned DLZ engineering to come up with a five year road improvement plan and that plan was adopted on January 1, 2013. The Town has been working that plan since.

Mr. Folland continued stating that different streets have been improved, and the Town is now moving around to the West Clear Lake Drive area. Been working different parts. Now moving to the West Clear Drive area to figure out what is going to happen to West Clear Lake Drive from Penner Drive to Lakeview Drive. The project will include this section of West Clear Lake Drive. Mr. Folland reported that over the winter he was in front of the County Commissioners concerning the bridge and concluded that the bridge is the County's and they are going to maintain it.

Mr. Folland reported that DLZ Engineering had been commissioned to pull all the deeds from this area and the preliminary word is that there is no right of way in this area, meaning each owner owns to the centerline of the road. This means that by State Law the only thing the Town can maintain is from edge of pavement to edge of pavement until the Town gets a road right-of-way. The preliminary numbers that were provided to the Town in January 2013 have \$400,000 for that section of road. Folland stated that \$400,000 represents two years of road funding for the Town.

Mr. Folland continued stating that as of this spring, the Town has commissioned DLZ and taken all the suggestions people have made through the years to work up different alternatives. Mr. Folland stated the Town does not have much interest in spending that much money to maintain a road that they have deemed not wide enough for dual lane traffic considering all the pedestrians. Mr. Folland reported the Town Council was not aware of this variance request until it was filed, so the Town is reacting just like everybody else. Mr. Folland stated that the Town has been working this plan for several years. Mr. Folland is requesting the BZA table this matter until the June meeting. As it is scheduled right now, Town Council members Roger Dammeier and Bob Lewis are intending to meet with the seven property owners to give them a preview of some of the solutions that have been discussed. Mr. Folland stated the

Town would prefer to not be locked into any type of solution by granting this variance. He reminded the BZA that there are 590 property owners around the lake that use this road, and we'd all like to have a private street with no traffic. Mr. Folland continued stating if the BZA feels this matter needs to be adjudicated at this time, the Town believes the BZA should not grant this variance request. Folland stated if something is put on one side of the driveway, it will literally be on the apron of the road. When the street yard setback was changed from 20 to 25 feet, it was so that pedestrians would be able to get off the road when there was vehicular traffic. Folland reported that the Town Manager concurs with the Town Council.

Board member Mr. Luepke asked if the Town anticipates that a decision will be made by the BZA's June meeting. Roger Dammeier, also a Town Council member, stated that there would be a meeting in May with the property owners along that stretch of West Clear Lake Drive. DLZ, the Town's engineer, is working up several different options for that stretch of road, and those options will be available at the May meeting. Mr. Dammeier stated that there has been some discussion about making it a bike path, but the Town can't do that because then the Town can't utilize it.

Mr. Wertz asked about it ultimately being a road or a sidewalk. Folland responded it would either be a public road or their private lane. Mr. Folland explained that it could not be made a bike path because the Town would then lose its legal authority to use that right of way.

Mr. Gartner asked what had changed since last October when the neighbor across the street was granted a street yard variance with no objection from the Town. Mr. Folland stated that the road would not go on the neighbor's side; it would go on the Gartner's side.

Mr. Wilhelm asked how this specifically affected the Gartner's property, stating he does not see how granting this variance would impact what the Town wants to do. Wilhelm stated that the Town has been at this for five years and out of the blue wants to hold up this project. Additionally, Mr. Wilhelm expressed discontent with the ex-parte communication from Town Council members. Chairman Brown agreed with Mr. Wilhelm.

Mr. Tom Schmidt, 254 West Clear Lake Drive, stated that the Gartner's garage is very tight, partially because mechanical equipment is permanently installed in the front. Currently, the depth of the garage is perfect for a small car or a golf cart. Schmidt stated the additional depth is necessary for the practical use of the garage to store vehicles, adding that not having a garage as a year round resident is a real challenge. If there's a compromise a foot to change the structure in some way, and it has to go west, Schmidt stated that he and his wife would not object to it.

Brown asked for any written correspondence had been received. Staff Schweitzer confirmed with Mr. Hawk that it was not necessary to read the communication from Mr. Folland since he spoke at the meeting. Mrs. Gartner stated they were blindsided by the Town's position. Schweitzer confirmed that she had contacted the Gartner's on Friday (before the meeting) at 1:00 PM to let them know about the email Mr. Folland had sent the BZA Chairman prior to the meeting. Hawk confirmed reading the email was not necessary. Mr. Schmidt's email was also not read aloud since Mr. Schmidt spoke at the meeting. Mrs. Schweitzer then read an email from Jeffrey and Molly Nagle. It stated the Nagle's have no reservations about the project and it looks like it is going to be a beautiful addition.

Chairman Brown asked for any further comments from the audience. Hearing none, Mr. Wilhelm made a motion to close the Public Hearing and reopen the regular BZA meeting. Mr. Luepke seconded the motion. Motion carried with all in favor.

Brown asked for questions and discussion from the Board. Mr. Wilhelm stated that expanding to their vacant lot is challenging and creates many problems. He stated the Gartner's had gone overboard with their sensitivity, and the addition seems well suited for the unusual lot. He queried the Board on the elevator location.

Mr. Wertz stated the Gartner's went through the appropriate process and used the necessary resources to come up with the proposed plan. Wertz stated he has no problems with the project as it is proposed. Wertz understood some on the Board questioned the length of the driveway, but he believes it is adequate. The Gartner's stated that they also have a lot across the street where some family members park. Staff Schweitzer confirmed that the Unified Development Ordinance only required four parking spaces for a single-family residence, and this project exceeds that.

Mr. Wilhelm again expressed concern about the footings being adequate to support the weight of the addition. Mr. Luepke asked about cutting the garage back a tiny bit stating that the Board needed to be aware of potential changes in the road. Wilhelm stated that a typical road is maximum of 16-feet wide, and even at that, it would not affect parking in the driveway.

There was discussion and negotiation about cutting a little off the proposed garage, and it was determined that instead of the garage expanding 6-feet, it would only expand 4-feet and 4-inches. The upper floors would be permitted to cantilever out to the 6-feet requested by the variance.

Hearing no additional discussion, Chairman Brown stated the Board would make the findings of fact for Case #2015-02, a Variance from Development Standards filed by Richard and Kristine Gartner at 253 West Clear Lake Drive. Regarding Variance A, relief from Section 2.14 Minimum Street Yard Setback.

Finding A1: *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 March 3, 2015; 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.*

Staff Schweitzer reported that a publisher's affidavit had not been received from the newspaper, although provided the printed notice. Schweitzer also reported that only one of the certified mail had been picked up. The other two were returned as "unclaimed." Mr. Wilhelm made a motion to accept Finding A1 as presented. Mr. Wertz seconded the motion. Motion carried with four voting in favor and zero voting against.

Finding A2: *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 addition will add less than 250 square feet of impervious surface resulting in minimal drainage changes to the site; (b) The proposed addition utilizes much of the existing footprint expanding upward, instead of outward, protecting the public's view of Round Lake; (c) The proposed addition does not block visibility of oncoming traffic; (d) The proposed addition will be set further off the street than adjacent homes; and (e) The encroachment into the street yard setback still allows adequate space to accommodate typical traffic conditions on this specific stretch of West Clear Lake Drive and leaves the owner with area for a vehicle to be in the driveway without being in the traveled roadway.*

Mr. Wertz made a motion to accept Finding A2 as presented. Mr. Wilhelm seconded the motion. Motion carried with four voting in favor and zero voting against.

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 (a) The use of adjacent property as residential*

areas will not change or be impacted as a result of this project; (b) The proposed addition, designed to minimize the impact on the site and neighboring property, will be constructed of quality materials consistent with the existing cottage; and (c) The proposed addition will visually tie together previous additions to the cottage for a more cohesive look.

Mr. Wilhelm made a motion to accept Finding A3 as presented. Mr. Luepke seconded the motion. Motion carried with four voting in favor and zero voting against.

Finding A4: *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because (a) The proposed addition is designed as an expansion upward, primarily on the existing building footprint, rather than an expansion outward. This upward expansion minimizes the land consumed for development, minimizes additional runoff, and protects public views of Round Lake. The strict application of the UDO permits an outward expansion that would increase impervious surface runoff, consume land, and block the views of Round Lake.*

Mr. Wertz made a motion to accept Finding A4 as presented. Mr. Luepke seconded the motion. Motion carried with four voting in favor and zero voting against.

Chairman Brown stated the Board would make the findings of fact for Case #2015-02, a Variance from Development Standards filed by Richard and Kristine Gartner at 253 West Clear Lake Drive. Regarding Variance B, relief from Section 2.14 Minimum Lake Yard Setback.

Finding B1: *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 March 3, 2015; 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.*

Staff Schweitzer reminded the Board that the same notes about the legal notice mentioned for Finding A1 apply. Mr. Luepke made a motion to accept Finding B1 as presented. Mr. Wertz seconded the motion. Motion carried with four voting in favor and zero voting against.

Finding B2: *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 addition will add less than 250 square feet of impervious surface resulting in minimal drainage changes on the site; (b) The proposed addition on the lake side is a second story and half story addition that is greater than 40-feet off the shoreline. The main story beneath this addition is closer to the lake; and (c) The proposed addition utilizes much of the existing footprint expanding upward, instead of outward, protecting the public's view of Round Lake.*

Mr. Wertz made a motion to accept Finding B2 as presented. Mr. Luepke seconded the motion. Motion carried with four voting in favor and zero voting against.

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 (a) The use of adjacent property as residential areas will not change or be impacted as a result of this project; (b) The proposed addition, designed to minimize the impact on the site and neighboring property, will be constructed of quality materials consistent with the existing cottage; and (c) The proposed addition will visually tie together previous additions to the cottage for a more cohesive look.*

Mr. Luepke made a motion to accept Finding B3 as presented. Mr. Wertz seconded the motion. Motion carried with four voting in favor and zero voting against.

Finding B4: *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because (a) The proposed addition is designed as an expansion upward, primarily on the existing building footprint, rather than an expansion outward. This upward expansion minimizes the land consumed for development, minimizes additional runoff, and protects public views of Round Lake. The strict application of the UDO permits an outward expansion that would increase impervious surface runoff, consume land, and block the views of Round Lake.*

Mr. Wilhelm made a motion to accept Finding B4 as presented. Mr. Wertz seconded the motion. Motion carried with four voting in favor and zero voting against.

Chairman Brown entertained a motion to approve. Mr. Luepke made a motion to approve Variance A, Minimum Street Yard Setback, with the condition being the garage addition on the ground floor level shall not exceed 4-feet, 4-inches and upper floors are permitted to extend 6-feet as presented, and approve Variance B, Minimum Lake Yard Setback. Mr. Wertz seconded the motion. Chairman Brown took a roll call vote. Mr. Luepke voted in favor; Mr. Wertz voted in favor; Mr. Wilhelm voted in favor; Ms. Brown voted in favor. Motion carried with four votes in favor and zero against.

Chairman Brown invited Mr. Schmidt to rejoin the Board. Under Old Business, Brown asked Board Members if they had reviewed the minutes from the December 15, 2014 meeting. Mr. Wilhelm made a motion to accept the minutes as presented. Mr. Wertz seconded motion. Motion carried with three votes in favor and two abstaining from the vote as they were not present at the previous meeting.

Under New Business, Staff Schweitzer distributed membership information and meeting/filing dates for 2015 and February of 2016. It was noted that member Ron Walters term date needs to be updated.

Chairman Brown stated that the Board needed to elect a Chairman and Vice Chairman. Mr. Wilhelm nominated Bonnie Brown to continue as chairman. Mr. Luepke seconded the motion. There being no additional nominations, Mr. Wilhelm made a motion to close the nominations. Mr. Luepke seconded the motion. All voted in favor of closing the nominations. All voted in favor of Bonnie Brown continuing as Chairman.

For Vice Chairman, Mr. Wilhelm nominated Ken Wertz. Mr. Schmidt seconded the nomination. Hearing no other nominations, Mr. Wilhelm made a motion to close the nominations. Mr. Luepke seconded the motion. All voted in favor of closing the nominations. All voted in favor of Ken Wertz as the Vice Chairman.

For Secretary, Mr. Luepke made a motion that Staff Amy Schweitzer be appointed as Secretary. Mr. Wertz seconded the motion. Motion carried with all in favor.

There was a brief discussion about the Rules Committee. It is comprised of the Chairman, Vice Chairman, and one other member of the Board of Zoning Appeals. Mr. Luepke suggested John Wilhelm. Mr. Wertz seconded the suggestion. All voted in favor of Mr. Wilhelm being the third member of the BZA's Rules Committee.

Schweitzer told the Board that a "Certificate of Action Taken" had been completed for the Pritchard Variance from 2013 and the Culbertson Variance from 2014. The "Certificate of Action Taken" is

recorded in the Office of the Steuben County Recorder for projects that have been granted a variance and have completed construction to document the variance.

For other New Business, Chairman Brown expressed a desire to have group site visits for variance applications. There was discussion about potential challenges (advertising it as a meeting; ex-parte communication, etc.), but it was mentioned that many other communities, including Steuben County, have group site visits. Mr. Wilhelm stated that it wouldn't be necessary for all variance requests, just the more complicated ones. Mr. Wilhelm also suggested a "grade level" stake should be required on project sites with the already-required building corner stakes. Staff will research the concept of group site visits and report back.

Schweitzer also distributed some detailed information on determining "Practical Difficulties." Schweitzer told the Board that Mr. Wilhelm had asked for more information on this particular finding of fact, and she wanted to share the information with the Board.

Brown asked if any new variance requests had been filed for the April 20 meeting. Schweitzer reported that one new variance application had been filed. Hearing no additional business, Chairman Brown entertained a motion to adjourn the meeting. Mr. Luepke made a motion to adjourn. Mr. Schmidt seconded the motion. Motion carried; meeting adjourned at 10:12 PM.

Respectfully Submitted:

Amy Schweitzer, Secretary