

Town of Clear Lake - Board of Zoning Appeals Meeting Minutes – June 15, 2015

Chairman Bonnie Brown opened the June 15, 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
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 Introductory Comments that identifies membership requirements and primary duties of the Board of Zoning Appeals.

Chairman Brown introduced Variance Case #2015-04, filed by Cheryl Johnson at 180 West Clear Lake Drive. The variance request is for relief from *Section 5.46 Location of Mechanical Equipment*. The proposed project is the installation of a generator that encroaches into the Minimum Side Yard Setback.

Chairman Brown asked Mrs. Johnson to present her case. Mrs. Cheryl Johnson, 180 West Clear Lake Drive, introduced herself. She told the Board she is now a full time resident, and as a widow, she lives alone. Mrs. Johnson stated she has asthma and a partial lung, and as a result does not tolerate really cold or really hot weather. In an effort to remain independent, she needs to have the generator installed. Mrs. Johnson told the Board that she has talked with her neighbors, and there are no concerns. Mrs. Johnson's daughter and son-in-law own the adjacent property on the side where the generator is proposed. Furthermore, she stated her lot is a bit unusual and her existing air conditioner and meters are already on the side where the generator is proposed. Mrs. Johnson concluded that the proposed location is the least offensive and the most logical location for the generator.

Chairman Brown asked the Board Members for questions. Mr. Wilhelm asked about the existing clothesline. Mrs. Johnson stated that the clothesline is on her property, and she doesn't mind removing it. There was some question about the distance between the generator and the property line. It was determined that distance was a minimum of 19-inches. Mrs. Johnson actually thinks it is more, though. Mr. Wilhelm asked about locating the generator closer to the lake, to take advantage of the offset in the house. Mrs. Johnson stated that would put the generator closer to the neighbor's patio where they sit to enjoy the lake making it more offensive.

Board Member Don Luepke stated that the proposed location really puts it out of view. Mr. Jack Daniel, 182 West Clear Lake Drive, introduced himself as Mrs. Johnson's son-in-law and the owner of the adjacent property. Mr. Daniel stated that the proposed location for the generator is right between the existing garages on both properties. Locating it to take advantage of the offset of the house, as Mr. Wilhelm suggested, would put it within earshot of their sitting area. Daniel added, between the two garages is the ideal location for the generator.

Board Member Ken Wertz agreed locating the generator between the two garages made the most sense to him.

Chairman Brown asked for any other comments from the Board. Hearing none, Mr. Wertz made a motion to close the regular meeting and open the Public Hearing for Variance Case #2015-04, a variance from development standards filed by Cheryl Johnson for a generator project at 180 West Clear Lake Drive. Mr. Luepke seconded the motion. Motion carried with all in favor.

Chairman Brown asked for comments from the audience. After a brief pause and hearing no comments from the audience, Brown asked Staff Amy Schweitzer to read the written correspondence received on this case. Schweitzer read a letter from Matt and Lisa Momper, 178 A West Clear Lake Drive, in support of the project. Schweitzer also read an email from Cindy and Steve King, 184 West Clear Lake Drive, also in support of the project.

Brown asked for comments from the audience one more time. Hearing none, 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 stated she was in support of the generator, but drew the Board's attention to Section 5.65 B of the Unified Development Ordinance, Clear Side Yard. This provisions states, "*Under all circumstances, at least one side yard shall be maintained free of obstacles including trees and shrubs that may prohibit accessibility. The clear area shall be at least four feet wide and ten feet in height above the ground level continuously on the "clean" side yard. The exceptions listed in 5.65 (A) Exceptions shall not supersede this requirement.*"

Ms. Brown stated the goal of this provision is to provide access to the lake in emergency situations, for example, to be able to get a stretcher from the street to the lake. Brown reminded the Board this is one of the safety issues that the Board needs to ensure is met. She mentioned that there is plenty of room now even with the generator, but if Mr. and Mrs. Daniel rebuild, they can come closer to the property line than their current structure.

Mr. Wilhelm mentioned there is already an impediment which was standard for the ordinance when Mrs. Johnson's house was built. Wilhelm stated that turning down the variance request would equate to penalizing Johnson for meeting the standards that were in effect at that time. Wilhelm suggested demanding a five-foot clear area on that side if the adjacent home were ever reconstructed. Ms. Brown stated that there is a path on the other side of Mrs. Johnson's house that could be taken in the case of an emergency, and agreed that it made sense to put the generator where the other mechanical equipment and utilities are located.

Hearing no additional discussion, Chairman Brown asked the Board about proceeding with the findings of fact. Mr. Wilhelm made a motion to proceed with the Findings of Fact for Mrs. Johnson's case. Mr. Luepke seconded the motion. Motion carried with all in favor. Before proceeding Ms. Brown stated that she would like to amend Finding 2, item A. and C. on the worksheet as follows:

- a. The proposed generator will be located with all of the existing exterior mechanical equipment along the north side of the house. Emergency access to the lake is provided by a path along the south side of the property.
- c. The proposed generator will not impact drainage or views

Mr. Wilhelm seconded the motion to amend Finding 2. All voted in favor.

Brown asked for any last comments or questions before proceeding with the Findings of Fact worksheet. Hearing none, Chairman Brown stated the Board would make the Findings of Fact for Case #2015-04, a Variance from Development Standards filed by Cheryl Johnson at 180 West Clear Lake Drive for relief from Section 5.46 Location of Mechanical Equipment.

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 May 29, 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.*

Mr. Wertz made a motion to accept Finding 1 as presented. Mr. Luepke seconded the motion. Motion carried with a vote of five in favor and zero against.

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 generator will be located with all of the existing exterior mechanical equipment along the north side of the house. Emergency access to the lake is provided by a path along the south side of the property; (b) the proposed generator is residential-grade and consistent with generators typically installed at residences; and (c) the proposed generator will not impact drainage or views.*

Mr. Wilhelm made a motion to accept Finding 2 as amended. Mr. Luepke seconded the motion. Motion carried with a vote of five in favor and zero 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 (a) the use of adjacent property as residential will not change or be impacted as a result of this project; and (b) the proposed generator will be installed by professionals and is residential-grade equipment.*

Mr. Luepke made a motion to accept Finding 3 as presented. Mr. Wertz seconded the motion. Motion carried with a vote of five 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 existing residence was constructed on the five-foot setback line with the mechanical equipment encroaching into the five-foot setback in accordance with the Town's laws at that time. Observing the five-foot side yard setback for new mechanical equipment involves relocating multiple utilities to a location that is less accessible. It would also mean exterior mechanical equipment would be located on multiple sides of the house.*

Mr. Walters made a motion to accept Finding 4 as presented. Mr. Wilhelm seconded the motion. Motion carried with a vote of five in favor and zero against.

Having made all the necessary findings of fact, Chairman Brown asked for a decision for Variance Case #2015-04, Cheryl Johnson at 180 West Clear Lake Drive requesting relief from Section 5.46 Location of Mechanical Equipment. Mr. Luepke made a motion to approve the variance request as presented. Mr. Wertz seconded the motion. Motion carried with each member of the Board of Zoning Appeals voting in favor of the motion via a roll call vote.

Chairman Brown introduced Case #2015-05, a variance from development standards request filed by Barry Worl of 787 South Clear Lake Drive. Mr. Worl is requesting relief from Section 2.12 Minimum Rear Yard Setback and Section 5.07E, Accessory Structure Location. Worl would like to construct a garden shed within the required thirty-foot rear yard setback.

Mr. Barry Worl, 787 South Clear Lake Drive, introduced himself and his fiancée, Karen Rice, stating that she would be using the garden shed. Mr. Worl told the Board that they would like to construct the shed on the back of the property because it would be more aesthetically pleasing to their existing set up and allow them to save a very large maple tree that shades the back yard. The footprint of the proposed shed will be the same as the existing shed, but the new one will have a different roof line in order to meet the UDO's Architectural Standards. The new shed will be 8-feet by 14-feet with a concrete and cobblestone apron. There will be a hanging swing on one side. Worl stated that Rice had designed the shed. Furthermore, the shed will have electricity, but no water. Worl stated the proposed shed will make their property look better and make things function better for them adding that they do lots of garden and lawn work. Worl asked for questions from the Board.

Mr. Wilhelm stated the backyard and garden is gorgeous. He asked how they intend to use the shed. Mr. Worl stated they are year-round residents, and the proposed shed will be space for Rice to store her gardening tools. Ms. Rice stated she envisioned the shed like a magazine picture that would match the existing shed. It will have a little cupola on the top and a double Dutch door. She told the Board about some antique furnishings she is planning to use in and around the shed. Wilhelm asked about extending the existing shed. Worl stated that would mean their existing fenced in storage area would be eliminated, and that is very functional space that they utilize.

Mr. Wilhelm asked why 10-feet from the property line? Ms. Rice stated the rusted out fire pit would be replaced and the proposed new shed would line up nicely with the fire pit. She stated a larger setback would begin to interfere with access to the existing shed.

Chairman Bonnie Brown agreed that the backyard was beautiful and the proposed location is the most logical place. Mr. Ken Wertz agreed that the proposed location is probably where he'd want to put a shed if it were his property.

Brown added that development on the property behind them is highly unlikely. Mr. Wertz commented on the two lots, one being inside the other. Mr. Worl added that he is in the process of completing an Administrative Subdivision to combine his lots into one.

Mr. Luepke asked about comments from adjoining property owners. Mr. Worl stated he had several neighbors offer to attend the meeting, but Worl told them it wasn't necessary. Mr. Worl told the Board he is not aware of any issues from neighbors adding that Mr. Fisher, the property owner that shares the rear property line has allowed Worl to put a garden on Fisher's property for forty years.

Chairman Brown asked for any other comments or questions from the Board. Hearing none, Brown entertained a motion to close the regular meeting and open the Public Hearing. Mr. Wertz made a motion to close the regular meeting and open the Public Hearing. Mr. Luepke seconded the motion.

Chairman Brown asked for comments from the public. Hearing none, Brown asked if any comments had been received from the public. Staff Schweitzer stated there had been no questions or comments from the legal notice. Brown paused briefly to provide an opportunity for any members of the public to speak before entertaining a motion to close the Public Hearing. Mr. Luepke made a motion to close the Public Hearing and re-open the regular meeting of the Board. Mr. Walters second the motion. Motion carried with all in favor.

Chairman Brown asked for any additional comments or questions from the Board. Mr. Wilhelm suggested that saying the property behind Worl's would "never" be developed might be setting a bad precedent because "never" is a long time. Wilhelm reminded the Board to be mindful of that. Mr.

Wilhelm stated that anywhere else, he'd probably deny this sort of request, but because of the specific circumstances and the tree, he would support the approval of the variance.

Chairman Brown asked for a motion to move forward with the Findings of Fact. Mr. Walters made a motion to proceed with the Findings of Fact for Mr. Worl's case. Mr. Luepke seconded the motion. Motion carried with all in favor.

Chairman Brown announced the Board would make Findings of Fact for Variance Case #2015-05, a variance from development standards filed by Barry Worl at 787 South Clear Lake Drive for relief from Section 2.12, Minimum Rear Yard Setback, and Section 5.07 E. Accessory Structure Location.

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 May 29, 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.*

Mr. Luepke made a motion to accept Finding 1 as presented. Mr. Wilhelm seconded the motion. Motion carried with a vote of five in favor and zero against.

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 garden shed has very little impact on drainage, views, and accessibility in this area.*

Mr. Wertz made a motion to accept Finding 2 as presented. Mr. Wilhelm seconded the motion. Motion carried with a vote of five in favor and zero 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 (a) the use of adjacent property as residential and accessory garages will not change or be impacted as a result of this project; and (b) the garden shed will be built onsite built, on a concrete slab, meet the Town's architectural standards, and have exterior materials that complement the exterior materials of the existing shed and house.*

Mr. Walters made a motion to accept Finding 3 as presented. Mr. Luepke seconded the motion. Motion carried with a vote of five 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 construction of the garden shed as proposed allows preservation of an existing tree and better use of the applicant's backyard.*

Mr. Wilhelm made a motion to accept Finding 4 as presented. Mr. Wertz seconded the motion. Motion carried with a vote of five in favor and zero against.

Chairman Brown entertained a motion regarding Case # 2015-05. Mr. Luepke made a motion to approve Case #2015-05, a variance from development standards filed by Barry Worl. Mr. Wilhelm seconded the motion. Motion carried with each member of the Board voting in favor of the motion via a roll call vote.

Introducing Old Business, Chairman Brown entertained a motion regarding the minutes from the April 20, 2015 meeting. Mr. Luepke made a motion to accept the minutes of the April 20, 2015 meeting as presented. Mr. Wertz seconded the motion. Motion carried with all in favor.

Chairman Brown asked the Board if they had reviewed the email and pictures provided by Staff regarding a drainage concern from Mr. Norb Bauman, a neighbor of Mr. McMaster at 100 Clear Lake Cove regarding a previously-granted variance. Mr. Wilhelm stated the Board acted according to the facts presented to them. The builder and property owner provided a satisfactory solution. Wilhelm stated it

has been a wet June with 2.9 inches of rain in the last three days, and the detention basin is doing what it was designed to do. Furthermore, once there is grass, the detention basin will function even better. Mr. Luepke stated he is not concerned about drowning given Clear Lake is feet away from most properties. The Board agreed the detention basin is working how it was designed to work. Wilhelm suggested the road side should be the overflow side.

Staff Amy Schweitzer presented a change to the Rules of Procedure of the BZA, per a recent change to the variance application. Mr. Wilhelm made a motion to amend Article 7.3 removing “or agent of the applicant.” Mr. Wertz seconded the motion. Motion carried with all in favor.

Hearing no other business, Mr. Wertz made a motion to adjourn. Mr. Luepke seconded the motion. Motion carried. Meeting adjourned at 7:58 PM.

Respectfully Submitted:

Amy Schweitzer, Secretary