

**Town of Clear Lake - Board of Zoning Appeals
Meeting Minutes – April 20, 2015**

Chairman Bonnie Brown opened the April 20, 2015 meeting of the Clear Lake Board of Zoning Appeals at 7:00 PM. Ms. Brown read the Board's Introductory Comments that identifies membership requirements and primary duties of the Board of Zoning Appeals. 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.

Chairman Brown introduced Variance Application #2015-03, filed by James Geiger at 920 South Clear Lake Drive. The variance request is from *Section 2.14 Minimum Lake Yard Setback*. The proposed project includes raising the roof to accommodate cathedral-type ceilings on the portion of the existing home that encroaches into the Minimum Lake Yard Setback.

Mr. Jim Geiger, 920 South Clear Lake Drive, introduced himself. He told the board that his cottage was originally built back in the 1940's. It was a 30-foot by 40-foot structure and was added onto towards the south (street side). His project consists of tearing down the part of the house built in the 1940's to the decking and rebuilding it. Geiger told the board that the existing foundation will stay, and all of the new walls will meet current construction standards. New windows and insulation will be installed. Mr. Geiger stated the existing hip roof is not conducive to shedding water and has resulted in ice dams on his roof. He would like to get rid of the hip roof and go to a gable end roof. Mr. Geiger stated that it will not interfere with any of the neighbors' viewsheds; it will be on the same foundation; not be any bigger nor any closer to the lake.

Chairman Brown asked if the roof closest to the lake is the part that is getting torn off. Geiger confirmed that the portion of the house closest to the lake is getting a new, modified roof. Board Member John Wilhelm asked if the existing foundation would support the weight of the new structure. Geiger confirmed it would. Board Alternate Tom Schmidt confirmed that the project was essentially modernizing the structure and only one room was going to be added. Mr. Geiger stated that one room, over the master bedroom, would be added under the shed roof. Geiger also stated that the entire house would get a new roof, but only the portion closest to the lake would have the shape and structure of the roof different from the way it exists today.

Hearing no other questions, Chairman Brown entertained a motion to close the regular session of the meeting and open the Public Hearing. Mr. Luepke made a motion to close the meeting and open the Public Hearing. Mr. Wertz seconded the motion. Motion carried with all in favor.

Chairman Brown asked for comments from the public. After a brief pause of no one requesting to speak, Staff Amy Schweitzer mentioned that Anita Thiel and Paul Hatten, owners of 926 and 927 South Clear

Lake Drive had some questions about the project. After reviewing the plans, they had no objections to the project. Schweitzer noted that Mr. Hatten was present at the meeting.

Chairman Brown, again, asked for comments from the public. Hearing none, Mr. Wilhelm made a motion to close the Public Hearing and re-open the regular BZA meeting. Mr. Luepke seconded the motion.

Chairman Brown told the Board that she went to the lake side decks of both adjoining owners and commented the project would have minimal, if any, impact to neighbors. Mr. Wilhelm commented that the viewshed was illustrated on the site plan, and that the project doesn't affect anyone on the ground level. Wilhelm stated he supports the petition. Mr. Schmidt, Mr. Wertz, and Mr. Luepke all agreed. Luepke asked if there would be any change to the drainage. Mr. Geiger stated there would not be any change to drainage explaining that currently the water dissipates into the yard and will continue to do so.

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 #2015-03, a Variance from Development Standards filed by James Geiger at 920 South Clear Lake Drive for relief from Section 2.14 Minimum Lake Yard Setback.

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 April 6, 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 provided a publisher's affidavit and the return receipts (green cards) for adjacent property owners. Mr. Wertz made a motion to approve Finding 1 as presented. Mr. Luepke seconded the motion. Motion carried with five voting favor of the motion 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) there is no change to the building footprint, and the cottage will remain 70+ feet off the lake; (b) the proposed project has no impact on the visibility of oncoming traffic or views of Clear Lake; and (c) the proposed project will result in minimal changes, if any, in drainage.*

Mr. Wertz made a motion to approve Finding 2 as presented. Mr. Wilhelm seconded the motion. Motion carried with five voting favor of the motion and zero voting against the motion.

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 lake residential will not change or be impacted as a result of this project; (b) the proposed project ~~includes an improved foundation and~~ will be constructed of quality materials consistent with the existing cottage; and (c) the proposed project will improve the value of the cottage and any impact on property values in the area will be positive.*

Mr. Wertz made a motion to approve Finding 3. Mr. Wilhelm made a motion to amend Finding 3 by removing the phrase, "includes an improved foundation and." Mr. Luepke seconded the amendment. All voted in favor of the amendment. Mr. Luepke seconded the motion to approve Finding 3 as amended. All voted in favor of accepting Finding 3 as amended.

Finding 4: *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because the proposed project makes use of the existing footprint of the cottage and simply changes the roof/ceiling configuration of this part of the cottage.*

Mr. Wertz made a motion to approve Finding 4 as presented. Mr. Wilhelm seconded the motion. Motion carried with five votes in favor.

Chairman Bonnie Brown asked for any discussion on Case #2015-03, a variance from development standards filed by James Geiger for relief from Section 2.14, Minimum Lake Yard Setback, for a project at 920 South Clear Lake Drive. Hearing no discussion, Brown entertained a motion. Mr. Luepke made a motion to approve Case #2015-03 as presented. Mr. Schmidt seconded the motion. Motion carried with each member voting in favor of the motion via a roll call vote.

Moving to Old Business, Chairman Brown asked for a motion to re-opened Case #2015-01, a variance from development standards filed by Robert McMaster for relief from Section 2.16, Minimum Front Yard Setback, for a project on the garage lot associated with 100 Clear Lake Cove. Mr. Schmidt made a motion to re-open Case #2015-01; Mr. Luepke seconded the motion. Motion carried with all in favor.

Chairman Brown asked Mr. McMaster to present the revised plans. Mr. McMaster stated the revised plans for his garage included shifting the entire building so that it abuts the 5-foot north setback line next to the Day's property; reducing the width of the garage by 1-foot; reducing the length by 7-feet; and adding a dry retention basin. McMaster asked his contractor, Gregg Richhart to explain the drainage plans. Mr. Richhart stated the revised plans include a dry retention area behind the garage that would take 3.5 inches of water shed off the building and driveway. Mr. McMaster stated that all water is moving away from the roads.

Mr. McMaster read from the revised plans to the Board and to the audience:

- Reduced building width by 1-foot
- Reduced building depth by 7-feet
- Moved building toward north property line which gained approximately 4.25-feet of side yard setback off south side
- Added dry retention basin which will accommodate approximately 3.3-inches of rain based on the square footage of building roof and all other impervious areas.
- Proposed the relocation of stop sign closer to intersection. Currently, this sign is 35-feet from southeast property corner.
- Added "vision clearance" line as per UDO 5.83b requirements
- Landscaping will consist of two trees and three shrubs, locations TBD.

Chairman Brown asked for questions from the Board. Mr. Luepke stated his question was not directed to Mr. McMaster, but Luepke asked about the stop sign being placed even further back from the intersection.

Mr. Wilhelm asked about the tree that is along Clear Lake Cove, near the property line shared with the Day's. Mr. Wilhelm encouraged McMaster to try to preserve the tree. Mr. Richhart stated that they were unsure how healthy the tree was. There was discussion about working the driveway around the tree.

There was discussion about the details of the dry retention basin. After the discussion, Mr. Wertz expressed appreciation for the drainage provisions that were proposed, as well as the temporary plywood building corner that was put up on the property.

Mr. McMaster stated the stretch of South Clear Lake Drive between Clear Lake Cove and County Road 700 East is like a freeway ramp, and the real danger is the curve in South Clear Lake Drive, not the intersection of Clear Lake Cove and South Clear Lake Drive. Mr. Schmidt agreed.

Mr. Luepke also expressed appreciation for the drainage changes that were proposed.

Mr. Wilhelm asked about the existing pipes and conduits sticking out of the ground at the site. Mr. Richhart stated the pipes and conduit were run from the house when it was constructed. One is for power; one is for an outside water hydrant; and the third is an extra for future phone, TV, or whatever.

Hearing no other questions from the Board, Chairman Brown entertained a motion to close the meeting and re-open the Public Hearing on Case #2015-01, a variance from development standards filed by Robert McMaster. Mr. Luepke made a motion to close the meeting and re-open the Public Hearing. Mr. Wertz seconded the motion. Motion carried with all in favor.

Chairman Brown asked for comment from the audience. Derold Covell, 112 Clear Lake Cove, expressed appreciation for the modifications. He stated the Town adopted the UDO for good reasons: Clear Lake is a unique resort community; he does not want it to look overbuilt like Lake James. He stated there are other options for storage available. Ultimately, Covell told the Board, this is an oversized garage on an undersized lot.

Evelyn Schlosser, 110 Clear Lake Cove, stated the garage was extremely large for a small lot. She expressed concern for safety. She asked about details about the legality of the stop sign, its proximity to the intersection, and traffic violations associated with the stop sign. Mrs. Schlosser also expressed concern about vehicles in the proposed driveway.

Brent Schlosser, 110 Clear Lake Cove, stated that he observed when a Star Homes van was recently parked on the lot, the view to County Road 700 East was blocked.

Hearing no other comments from the public, Staff Amy Schweitzer read aloud an email from Joann Stanley concerning the revised plans. The email stated that the proposed changes were good, but the garage is still too close to South Clear Lake Drive, and she would like to see the width of the garage reduced to 20-feet; the garage moved to the north so it is only 1-foot off the property line shared with the Day's; and the dry retention basin should be at least 3-feet deep.

Chairman Brown again asked the public for comment. Mr. Roger Dammeier, 624 East Clear Lake Drive, stated that Mr. McMaster had done a good job of making changes. Dammeier commented he did not have any trouble seeing down South Clear Lake Drive from the intersection. Dammeier suggested that maybe the asphalt could be squared up a little to provide a spot for the stop sign that is closer to the intersection.

Mr. Covell suggested that landscape plantings on the south side of the garage be limited. Concern was expressed for boats and garbage trucks making the turn. Mr. Dean Day, 102 Clear Lake Cove, stated that a 30-foot box truck made the turn today without any problem.

Hearing no other comments from the public, Mr. Schmidt made a motion to close the Public Hearing portion of the meeting and re-open the regular meeting. Mr. Wilhelm seconded the motion. Motion carried with all in favor.

Mr. Wilhelm asked about the landscaping. Mr. McMaster stated that he was thinking small boxwood shrubs along the garage façade on the South Clear Lake Drive side and maybe the same thing on the Clear

Lake Cove side. With regard to trees, if the existing tree is not able to be preserved, a new tree would likely go in the same location with the second required tree going by the dry retention basin. Staff Schweitzer asked that the location of the landscaping be agreed upon at the meeting.

Chairman Brown stated Mr. McMaster's revised plans did not address all of the Board's issues. She stated she had asked the width to be reduced by 5-feet. Staff Schweitzer commented that the follow up letter to Mr. McMaster after the March 23rd meeting was generic in requesting the size of the building be reduced. After checking the minutes of the March 23rd meeting, it was determined that the motion made at the meeting also was generic simply requesting the building be made smaller.

Mr. Luepke expressed appreciation for the revisions that were made, but also expressed concern for the setback along South Clear Lake Drive being less than 30-feet. Mr. Schmidt concurred, but stated that the revised plans address each issue that the Board brought up during the March 23rd meeting.

Mr. Wilhelm summed up the situation by stating that if the Town were to strictly apply the provisions of the Unified Development Ordinance, the lot would be undevelopable. He stated that the garage, as proposed, gives ample space to stop, approach the intersection, and provide adequate view of oncoming traffic. Mr. Wilhelm suggested the revised plans be approved stating McMaster has been reasonable in following the Board's suggestions while still meeting his needs.

Chairman Brown stated the neighbors are still commenting about the large size of the proposed garage, and she agrees. Brown suggested the garage be smaller, still, like the Day's garage that is 35-feet by 30-feet.

Mr. Wertz stated he agreed with Mr. Wilhelm. Wertz referenced Policy 7.2 in *the Clear Lake Comprehensive Plan* which states there are a lot of unique situations around the lake. He told the Board he always tries to think about the neighbors – and how they would feel if the situation were reversed – meaning if one of those objecting to the size of the garage needed the variance.

Mr. Luepke asked if there is anything that can be done in the future to alleviate a problem like this. Staff Schweitzer stated the Town is already doing things differently than they were in 2006 commenting that the adoption of the Unified Development Ordinance and the hiring of professional staff.

Chairman Brown asked about a note on the plans referencing siding being as close to the ground as building code allows. Mr. Richhart stated that building code requires space between siding and the ground. He stated they would snap a line and follow that for the siding.

Brown asked about the specifics with regard to landscaping. The Board and Mr. McMaster agreed there would not be any trees planted on the south side of the building.

Mr. Wertz made a motion to move forward with the Findings of Fact for Case #2015-01, a request for relief from 2.16 Minimum Front Yard Setback, filed by Robert McMaster of 100 Clear Lake Cove. Mr. Luepke seconded the motion. Motion carried with all in favor. Chairman Brown reminded the Board to reference the "REVISED FINDINGS OF FACT WORKSHEET" that is printed on blue paper.

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 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.*

Mr. Luepke made a motion to accept Finding 1 as presented. Mr. Wertz seconded the motion. Staff Schweitzer reported that the certified mailing to Mr. and Mrs. Hoagland came back unclaimed, but they had sent an email supporting the project. The vote to accept Finding 1 as presented passed with all voting in favor.

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 drainage from the proposed detached garage will be to a new dry retention basin which is appropriately sized to accommodate additional runoff; (b) the distance between South Clear Lake Drive and the proposed detached garage is adequate to accommodate the typical traffic conditions on that specific stretch of South Clear Lake Drive; and (c) the proposed detached garage will provide the owner with necessary storage to house and secure his belongings out of the public's view.*

Mr. Wilhelm made a motion to accept Finding 2 as presented. Mr. Schmidt seconded the motion. Motion carried with three votes in favor; one vote against; and Mr. Luepke abstaining.

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 residences and storage via detached garages and small storage buildings will not change or be impacted as a result of the project; and (b) the value of adjacent property will be enhanced because the detached garage will be constructed using high-quality building materials that complement the owner's residence.*

Mr. Wertz made a motion to accept Finding 3 as presented. Mr. Wilhelm seconded the motion. Motion carried with all in favor.

Finding 4: *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because the street yard setbacks applied to both the Clear Lake Cove side and South Clear Lake Drive side of this property result in a building envelope that is six-feet wide.*

Mr. Wilhelm made a motion to accept Finding 4 as presented. Mr. Luepke seconded the motion. Motion carried with all in favor.

Chairman Brown entertained a motion for a decision regarding Case #2015-01 filed by Robert McMaster at 100 Clear Lake Cove for relief from Section 2.16 Minimum Front Yard Setback. Mr. Wilhelm made a motion to approve the revised plans as presented. Mr. Wertz seconded the motion. Motion carried with four votes in favor and one vote against via a roll call vote. The voting was as follows: Mr. Luepke voting in favor with reservation; Mr. Schmidt voting in favor; Mr. Wertz voting in favor; Mr. Wilhelm voting in favor; and Ms. Brown voted against.

Moving on to other Old Business, Chairman Brown asked the Board if they had reviewed the minutes from the March 23, 2015 meeting. Mr. Luepke made a motion to approve the minutes as presented. Mr. Schmidt seconded the motion. Motion carried with all voting in favor.

Staff Schweitzer reported her research on group site visits turned up a lot of potential issues. Schweitzer posed questions about group site visits on a Planners' List Serve, and every response to the question discouraged group site visits. Knowing Steuben County conducts group site visits, Schweitzer contacted them and got the details. Basically, there is no discussion during Steuben County's site visits. After some discussion, the Board agreed to drop the subject of group site visits for now. There was, however, additional discussion about including a sample site visit as training for new Board members.

Under New Business, there was discussion and question about "abstaining" from a vote on a finding, but voting yes for the application. The Board asked Mr. Hawk to research and confirm this concept. Also,

there was discussion about a “no” vote on any finding requiring a “no” vote for the application. Hawk will conduct some additional research, and report back to the Board on this.

Chairman Brown also brought up the Vision Clearance Standards and asked to have the Plan Commission review those standards. She believes the standards are very weak and lack the details necessary to apply them.

The next regular Board meeting is June 15 at 7 PM with the filing deadline of May 18. Schweitzer reported she expected at least one new application.

Hearing no additional business, Mr. Luepke made a motion to adjourn. Mr. Wertz seconded the motion. Motion carried; meeting adjourned at 8:56 PM.

Respectfully Submitted:

Amy Schweitzer, Secretary