

Town of Clear Lake - Board of Zoning Appeals Meeting Minutes – August 17, 2015

Chairman Bonnie Brown opened the August 17, 2015 meeting of the Clear Lake Board of Zoning Appeals at 7:00 PM. Chairman Brown announced that Ken Wertz had resigned from the Board of Zoning Appeals. Introductions were made, and the following members of the Board were present:

Bonnie Brown, Chairman
Don Luepke
Tom Schmidt
Ron Walters
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 stated the Board would first hear Case #2015-06, a Variance from Development Standards filed by Triple J Ventures, LLC for 100 Sunset Bay Court. Triple J Ventures is requesting relief from Section 5.65 *Horizontally Protected Viewshed*. A new cottage is proposed, a portion of which encroaches into the required Horizontally Protected Viewshed.

Chairman Bonnie Brown asked for the applicant. Mr. Dave Von Deylen, Triple J Ventures, introduced himself. Mr. Von Deylen told the Board Triple J Ventures bought this lot (and the adjacent lot) several years ago and has been trying to sell them since about 2008 when real estate sales began to decline. Von Deylen stated he had been working with Gregg Richhart of Star Homes over the last year to clean up the lots so they could be better marketed. There is now an interested party in this particular lot that is ready to proceed. Von Deylen stated that because the neighboring home (owned by the Gallmeyers) is back in a corner, the one-size-fits-all viewshed requirement makes the lot Triple J owns very difficult to build on as it is intended.

Chairman Brown asked Staff Schweitzer to explain the Horizontally Protected Viewshed requirement. Schweitzer stated that the Town's Unified Development Ordinance protects the lakeside view of lots on each side of a lot that is being built upon. The viewshed is determined for each adjacent lot by the following process:

- 1) Create a lot centerline (for each adjacent lot);
- 2) Draw a line that is perpendicular to the lot centerline and intersects the point of the existing house that is closest to the lake;
- 3) From the right angle created by these two lines, a line that is 30° from the perpendicular is drawn out 150-feet on each side to create the viewshed.

Schweitzer offered the audience the page from the Unified Development Ordinance that illustrates the viewshed and the steps for determining it.

Chairman Brown asked for questions from the Board. Mr. Wilhelm offered some constructive criticism about the staking of the property stating that the nails with ribbons were extremely difficult to find. Mr. Richhart apologized stating that long lathe had been used, but when the surveyor came out to confirm the location, the surveyor replaced the lathe with the nails.

Mr. Wilhelm also asked if the house could be sited back toward the street four feet so it is at the street side setback, thereby encroaching less into the viewshed. Mr. Richhart stated that it was the original intent for the house to be against the street side setback, but the surveyor sited it at the front (lake) edge of the lot. Richhart explained that he had installed a stake (with a ribbon around it) that showed where the corner of the house would be if it were placed at the street side setback. Chairman Brown asked about the length of the driveway; Mr. Richhart stated the driveway is 43-feet long, as it is proposed.

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

Chairman Brown opened the floor for the public comment. Mrs. Virginia Gallmeyer, 98 West Clear Lake Drive, introduced herself and told the Board that they had reviewed the plans. She stated the shed that blocks the view of the proposed home is not permanent, and therefore should not be taken into consideration. Mrs. Gallmeyer stated she was not sure yet if they opposed or supported the project.

Brown asked for other comments from the public. Hearing none, Staff Amy Schweitzer stated no comments had been received from the public notice, except that the Gallmeyers had been in to review the file.

Mr. Von Deylen referenced a picture he had provided the Board of Zoning Appeals stating a cotton wood tree, where the brown spot was, was removed in preparation to make the lot more buildable. He also stated when he was clearing and preparing the lot, he cleaned up a small willow tree on the front corner and cleared the cattails from the area making the view for the Gallmeyer's easier. He stated that he spoke with them prior to doing that work. He added that he wanted to continue to be a good neighbor.

Chairman Brown asked for any more public comment. Hearing none, she entertained a motion to close the Public Hearing and reopen the regular meeting. Mr. Luepke made a motion to close the public hearing and reopen the regular meeting. Mr. Walters seconded the motion. Motion carried with all in favor.

Mr. Luepke stated that the Gallmeyers are the most impacted by the granting of this variance, and he gave the Gallmeyers an opportunity to share their opinion. The Gallmeyers remained silent.

Mr. Wilhelm stated that the layout of the Gallmeyer property is a bit irregular. He stated from their furthest window, where the trellis is, he did not believe the proposed house would obstruct their view of the lake. He did ask if the applicant would be willing to move the proposed house back four feet so that it was at the 25-foot street side setback.

Mr. Schmidt agreed stating that even with moving the house towards the street four feet, the driveway would still be 39-feet long and the lake side setback would be more generous. Chairman Brown stated that she had stood on the Gallmeyers deck and did not believe their view would be diminished.

Mr. Richhart stated the house could be moved back four-feet making the street side setback 25-feet 6-inches. He requested the 6-inches to work with.

Chairman Brown asked for other comments from the Board. Mr. Luepke encouraged the applicant to maintain the glacial rock seawall that exists on the property stating it was one of the few that remained around the lake.

Chairman Brown entertained a motion regarding the four-foot change in the site plan. Mr. Wilhelm made a motion to recommend the minimum distance to the nearest corner of the proposed house to the street be 25-feet 6-inches. Mr. Luepke seconded the motion. Motion carried with all 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 #2015-06, a Variance from Development Standards filed by Triple J Ventures at 100 Sunset Bay Court for relief from Section 5.65 Horizontally Protected Viewshed.

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 August 5, 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. Schmidt seconded the motion. Motion carried with 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 new residence will be constructed of high quality materials, is appropriately-sized for the lot, and will have very little, if any, impact on traffic along Sunset Bay Court; and (b) the proposed new residence will be located in line with the adjacent property owner's shed and will not obstruct the adjacent property owner's view of the lake.*

Mr. Walters made a motion to accept Finding 2 as presented. Mr. Luepke seconded the motion. Motion carried with 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 new residence will be constructed of high quality materials, is appropriately-sized for the lot, and will support maintaining or improving adjacent property values.*

Mr. Wilhelm made a motion to accept Finding 3 as presented. Mr. Luepke seconded the motion. Motion carried with 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 when applied to this scenario, the Horizontally Protected Viewshed includes nearly half the subject lot leaving a very small building envelope for a new residence. Additionally, the adjacent property owner has an existing shed within the required Horizontally Protected Viewshed, which limits his views of the lake and adjacent property.*

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

The Board discussed a condition to move the proposed house back so that the southeast corner is 25-feet 6-inches from the edge of the pavement. Mr. Luepke made a motion to accept the condition that the proposed house gets moved back so that the southeast corner is 25-feet 6-inches from the edge of the pavement. Mr. Wilhelm seconded the motion. Motion carried with five votes in favor and zero votes against.

Chairman Brown asked for roll call vote to Approve with Conditions Case #2015-06, a Variance from Development Standards filed by Triple J Ventures at 100 Sunset Bay Court for relief from Section 5.65 Horizontally Protected Viewshed. Each member of the Board of Zoning Appeals voted in favor to Approve with Conditions via roll call vote.

Chairman Brown introduced Case #2015-07, a Variance for Development Standards filed by Terry and Ann Melton at 1062 South Clear Lake Drive. The Melton's are requesting relief from Section 2.14 Minimum Street Yard Setback as they would like to construct a new cottage and push it as close to the street as possible in an effort to preserve an existing large mature tree.

Terry Melton, 1062 South Clear Lake Drive, introduced himself and his wife Ann Melton. Mr. Melton told the Board that their existing cottage was in disrepair, and due to structural and mold issues and to provide better accessibility as they age, they have decided to rebuild. They would like a five-foot variance from the required 25-foot street side setback. Melton explained there is a very large shade tree on the north side of their property that they would like to preserve.

Mrs. Melton provided many facts from the Arbor Foundation about trees to the Board including that trees cool lakes and protect water supplies. She stated the tree adds to the character and ambiance of the lake. The additional five-feet that the variance, if granted, would be beneficial in the follow ways:

- Adds stability to the tree's root zone and increases the tree's chance of survival;
- Is beneficial because the 20-foot street side setback is greater than what exists now and also greater than what many of the other neighbors have; and

- Increases the viewsheds of neighbors and adds green space to the lake side of their property.

Mr. Melton stated they have met with the three closest neighbors on each side, and five of the six wrote letters in support of the project and expressed the same concern for the tree's survival. Melton mentioned that Chaputs did not provide a letter, but that they expressed support for the project. Mrs. Schweitzer distributed copies of the letters to the Board.

Chairman Brown asked for questions from the Board. Mr. Luepke asked if the tree in question was the large, double-trunked Basswood. The Meltons confirmed the Basswood is the tree in question and is on their property. Mr. Wilhelm asked about the damage/scar on the tree. Mr. Melton stated that the damage occurred over 10-years ago and the tree hasn't had any issues with it since. Mr. Wilhelm commented that the tree did not appear unhealthy, but he was concerned by the scar.

Mr. Wilhelm asked if the five other trees were being cleared for the project. Mr. Melton stated one tree had to come down regardless, and the others, in order to make the house normal size, would be unlikely to survive. Melton added, having only one left makes it pretty important. Mr. Luepke agreed that the Basswood is an asset to all of the lake, and he, personally, loves seeing all the green.

Chairman Brown expressed concern that the tree would die anyway. She stated that if the tree were replaced now, they might end up ahead. The Melton's stated they were willing to take the risk on it surviving. Mr. Melton also offered that they would be planting as many new trees as they could, including at least two on the street side and others on the lake side, if it met the Ordinance and the neighbors were agreeable.

Mr. Wilhelm stated that he was not moved by the argument that existing, adjacent cottages were closer than 20-feet to the street, stating that the Board looks at his situation alone – without any precedent of what exists.

Hearing no other questions or comments from the Board, Chairman Brown entertained a motion to close the regular meeting and open the Public Hearing. Mr. Walters made a motion to close the regular meeting and open the Public Hearing. Mr. Luepke seconded the motion. Motion carried with all in favor.

Mr. Ken Goeckel, 1024 South Clear Lake Drive, introduced himself stating there are two issues. The first is gaining more grass on the lake side which helps the watershed. As a previous member of the water quality committee and the zoning board, Goeckel stated this is a very big deal for the lake. The second issue is gaining some trees on the street side to also help the watershed absorb more from the street and provide stability along the slope. Mr. Goeckel stated there are lots of reasons to support this project.

Hearing no other comments from the public, Mrs. Schweitzer read all five letters received concerning the project:

- Cynthia Gerke, Bonita Cook, Pamela Strater, and Terrance Heckman, 1102 South Clear Lake Drive – are in favor of the request for a variance.
- Terry and Terence Heckman, 1100 South Clear Lake Drive – have no problem with the variance request and would like to try to salvage the tree.
- Margie Yackee, 1104 South Clear Lake Drive – has no objection to the variance request.
- Bert Elliot, 1058 South Clear Lake Drive – expresses full support for the request of variance.
- Larry and Mary Zeman, 1056 South Clear Lake Drive – supportive of the plans to build and have no objection to the requested variance.

Chairman Brown provided one last opportunity for public comment. After a brief pause and hearing no public comment, Mr. Schmidt made a motion to close the Public Hearing and reopen the regular meeting of the Board. Mr. Wilhelm seconded the motion. Motion carried with all in favor.

Chairman Brown asked for questions or comments. Hearing none, Brown expressed concern because all of the parking for the new cottage is across the street. Brown is concerned that years from now, if the cottage on the back lot gets sold separately from the cottage that is proposed, it could cause parking problems. The Melton's spoke very highly of their children also stating that the back lot was as valuable to them as the lake lot. It has parking, storage, area for play, and is a big deal to their family. Separating the two is not realistic for their family and they don't see it happening. Mr. Melton added the same concern could apply to every cottage that has a back lot garage around the lake.

Brown also asked about each of the Melton's parcels having a separate "little sliver" parcel. Brown asked about combining those slivers with each of the main lots via an Administrative Subdivision. The Melton's were agreeable to the idea.

Hearing no other questions or comments, Mr. Luepke made a motion to move forward with the Findings of Fact. Mr. Wilhelm seconded the motion. Motion carried with all in favor.

Mr. Richhart asked to talk about the viewshed for the Melton's before proceeding with the Findings of Fact. He told the Board that if the variance is not granted, the Melton's could potentially have a viewshed issue. He stated it depended on how the lot centerline for the adjacent lots was determined. Mrs. Schweitzer provided the Board with four different viewshed drawings for the Melton project and explained the methodology behind each. After some fun mathematical discussion about the creation of lot centerlines, Mr. Wilhelm suggested the logical solution was to use a twenty-foot street side setback as has been presented.

Chairman 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 #2015-07, a Variance from Development Standards filed by Terry and Ann Melton at 1062 South Clear Lake Drive for relief from Section 2.14 Minimum Street 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 August 5, 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. Walters made a motion to accept Finding 1 as presented. Mr. Luepke seconded the motion. Motion carried with 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 new residence will be constructed of high quality materials, is appropriately-sized for the lot, and will not obstruct neighboring property owners' views of the lake; and (b) the proposed new residence will not have a garage, driveway, or parking area on the subject lot, making the proposed 20-foot street yard setback sufficient to accommodate typical traffic along this stretch of South Clear Lake Drive. Additionally, the 20-foot street yard setback is greater than the street yard setback of the current cottage and an adjacent cottage.*

Mr. Luepke made a motion to accept Finding 2 as presented. Mr. Wilhelm seconded the motion. Motion carried with 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 areas will not change or be impacted as a result of this project; and (b) the proposed new residence will be constructed of high quality materials, is appropriately-sized for the lot, preserves as many large canopy trees as possible, and will be further off the street than the current cottage. This helps maintain the character of the area and enhances adjacent property values.*

Mr. Wilhelm made a motion to accept Finding 3 as presented. Mr. Walters seconded the motion. Motion carried with 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 strict application of the terms of the Unified Development Ordinance will result in the removal of a large mature tree that is valued by the property owners in the area and adds to the character of this area. Since the subject lot does not lend itself to a driveway or parking pad off the street, the proposed 20-foot street yard setback is sufficient.*

Mr. Schmidt made a motion to accept Finding 4 as presented. Mr. Luepke seconded the motion. Motion carried with five in favor and zero against.

Chairman Brown asked for roll call vote to approve Case #2015-07, a Variance from Development Standards filed by Terry and Ann Melton at 1062 South Clear Lake Drive for relief from Section 2.14 Minimum Street Yard Setback, as presented. Each member of the Board of Zoning Appeals voted in favor to Approve via a roll call vote.

Under Old Business, Chairman Brown asked if the Board had reviewed the minutes from the June 15, 2015 meeting. Mr. Wilhelm made a motion to approve the minutes as presented. Mr. Luepke seconded the motion. Motion carried with all voting in favor.

Chairman Brown also brought up the retaining wall that was constructed at Mrs. Cheryl Johnson's house at 180 West Clear Lake Drive, as part of her generator project. The Board granted a variance for the placement of the generator earlier in the year, but a retaining wall was not part of the project as presented to the Board. Discussion ensued.

Brown asked for any other business to come before the Board. Schweitzer distributed copies of the amended Rules of Procedure, and told the Board that she thought there would be cases for the October meeting even though nothing had been officially filed.

There being no other business to come before the Board, Mr. Luepke made a motion to adjourn. Mr. Schmidt seconded the motion. Motion carried; meeting adjourned at 8:28 PM.

Respectfully Submitted:

Amy Schweitzer, Secretary