

**Town of Clear Lake - Board of Zoning Appeals
Special Meeting Minutes – February 15, 2016**

Chairman Bonnie Brown opened the February 15, 2016 Special Meeting of the Clear Lake Board of Zoning Appeals at 6:00 PM.

Introductions were made, and the following members of the Board were present:

Bonnie Brown, Chairman
Jaclyn Howarth
Don Luepke
Tom Schmidt

Also present:

Amy Schweitzer, Zoning Administrator and Recorder of the minutes of the meeting
Michael Hawk, Attorney for the Board of Zoning Appeals

Chairman Brown asked Staff Amy Schweitzer and Attorney Mike Hawk to proceed with training. The following items were discussed:

- Public Hearing Procedures
- Adding Conditions
- Practical Difficulties and Unnecessary Hardships
- General Questions and Discussion

There being no additional business, Mr. Luepke made a motion to adjourn. Mr. Schmidt seconded the motion. Motion carried with all in favor. Meeting adjourned at 6:51 PM.

Respectfully Submitted:



Amy Schweitzer, Secretary

Town of Clear Lake - Board of Zoning Appeals Meeting Minutes – February 15, 2016

Chairman Bonnie Brown opened the February 15, 2016 Regular Meeting of the Clear Lake Board of Zoning Appeals at 7:05 PM.

Introductions were made, and the following members of the Board were present:

Bonnie Brown, Chairman
Jaclyn Howarth
Don Luepke
Tom Schmidt

Also present:

Amy Schweitzer, Zoning Administrator and Recorder of the minutes of the meeting
Michael Hawk, Attorney for the Board of Zoning Appeals.

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 hear Case #2016-01, a Variance from Development Standards filed by Harold and Cheryl Hahr at 350 East Clear Lake Drive. Mr. and Mrs. Hahr would like to construct a new garage on their garage lot, and the proposed structure encroaches into the 20-foot rear yard setback and exceeds the 50% maximum allowable lot coverage.

Chairman Brown asked for the applicant's presentation. Mr. Erik Hahr, 350 East Clear Lake Drive, introduced himself as the son of Mr. and Mrs. Harold Hahr. Mr. Erik Hahr began by stating there was "a gray area" in calculating lot coverage and that their pavers have a much higher permeability than is defined in the Unified Development Ordinance. He told the Board their pavers were installed with weed barrier and silicon sand. Mr. Erik Hahr stated they planned to go straight back with the garage so they can build on top of the existing concrete and utilize the existing pavers. Mr. Erik Hahr stated they are not encroaching a great amount over the required setback, and added that the property behind is not developed and is dense woods. Mr. Erik Hahr stated that when the paver surface was installed, the impervious surface calculation was 75% not the 90% that it is now. He told the Board that the water will disappear from the paver surfaces given 5% to 10% in evaporation, and the pavers are as good as grass. Mr. Hahr concluded by saying they want to build in regard to what is existing.

Chairman Brown asked if there was anything else they wanted to share. Mr. Erik Hahr added that the City of San Francisco considers pavers 100% pervious surface. He questioned why the Plan Commission changed the coverage percentage for pavers from 75% to 90% and referenced the Plan Commission minutes from a 2012 meeting. He stated if polymeric sand was used in paver installation, it would create an impervious surface, but his family created a pervious

surface because of the weed barrier and loose silicone sand. Hahr said the water runs right through their pavers. He concluded his family was green before being green was even a thing.

Mr. Erik Hahr added that if the 75% coverage calculation is used, then their actual lot coverage goes down to 51%. He told the Board it was not fair to lump their pavers in with others that are impervious, and they had no intention of changing the way their pavers were installed.

The Board asked about the discrepancy in the length of their lot, even though the site plan and calculations are based on a 100-foot lot length. Mr. Erik Hahr provided an Indiana Code provision and explained deeds take precedence over surveys when there are discrepancies. The Board mentioned the copy of the Deed they had also had the lot at 96-feet in length.

Chairman Brown asked why the additional space was necessary. Mr. Erik Hahr stated they need more space, and the existing garage is in need of repair and replacement. They envision half the garage being used for parking and the back half to be shop area. The proposed larger garage will allow more space for shop equipment.

The Board questioned drainage of the site. Mr. Harry Hahr stated the gutters drain to the existing catch basins. One is near his mailbox, and the Town cleans it out. Hahr believes it is a 6-inch pipe that goes to the lake. There is a 4-inch pipe from the garage to the catch basin.

Mr. Schmidt asked if they had water problems in the existing garage, why are they planning to utilize the existing foundation? Mr. Erik Hahr stated the garage cement is at ground level and they would be adding 6-inches of concrete on top of what is there. Hahr commented the existing garage was made mostly out of recycled materials, and the existing concrete had so much rebar in it that it would cost a lot to have it removed. The new garage will look just like the existing garage except it will be longer in the back, may be a foot taller than it is now, the front façade will be stone, and the siding will be shake-style like what is on their cottage.

Mr. Schmidt asked about the garage door on the side. Mr. Erik Hahr stated there would be no vehicles in the back part of the proposed garage – just storage for wood and tools.

Hearing no additional questions from the Board, Chairman Brown thanked the Hahrs for their presentation and announced the Board would move to the Public Hearing portion of the meeting. Mr. Schmidt made a motion to close the regular meeting of the Board of Zoning Appeals and open the Public Hearing. Mr. Luepke seconded the motion. Motion carried with all in favor.

Chairman Brown began by asking Staff Schweitzer if any letters or emails had been submitted as a result of the public notice. Schweitzer stated that the Staff Report showed that Mr. CJ Getz had emailed with questions about the project. After receiving copy of the application and supporting information, Mr. Getz responded that he had no objections to the proposed variance. Schweitzer also reported she had also received an email from Bob Lewis about the project. Schweitzer read Mr. Lewis' email – Lewis had told Mr. Harry Hahr that "he needed to show hardship in order to receive a variance. He needed to have a Plan B." Lewis' email suggested Hahr speak with Schweitzer about bringing the garage forward a little bit and shortening the back so he is not

over the setback would be better off than getting a variance. If he makes those changes, Lewis has no problem with the garage.

Chairman Brown offered anyone in support of the project the opportunity to speak. After a brief pause and no one coming forward, Chairman Brown offered anyone in opposition to the project the opportunity to speak. Mr. Gary Johnson, 353 East Clear Lake Drive, introduced himself. Mr. Johnson stated he doesn't understand why it is so important for the project to encroach into the rear setback, when there is room to expand toward the street and on the sides. Johnson asked what was so important about the brick pavers that they had to encroach into the rear setback?

Brown asked for any other comments from the public. Hearing none, Mr. Schmidt made a motion to close the Public Hearing portion of the meeting and reopen the regular meeting. Mr. Luepke seconded the motion. Motion carried with all in favor.

The Board discussed the discrepancy with the length of the lot – 96-feet on the survey and in one deed verses 100-feet on a different deed. The Board discussed the smaller 96-foot lot length means the percentage of the lot covered with impervious surfaces is even greater, and that makes the building 11-feet off the property line. Mr. Luepke stated Clear Lake is not San Francisco and there is no way the pavers can be “as good as grass.” Luepke concluded that he had issues with both the coverage and setback variance requests.

Mr. Schmidt commented that he also struggles with the lot length discrepancy and the fact that there are multiple ways to construct a 1,200 square foot garage on the lot without variances and still retain the functionality the Hahrs have expressed they want. The Board discussed a couple of options that would not require variances – making the garage parallel to the front/rear property lines rather than the side property lines and making better use of the width of the lot. Board Member Jaclyn Howarth agreed that the applicant has several other options.

Chairman Brown stated that the need for the variance really is self-created in this case. There is no hardship.

Mr. Luepke asked the Hahrs to specifically address the lot length discrepancy. Mr. Erik Hahr said they wanted to use the existing cement and build back. The front section of the garage would be for parking and boat storage. If the building is wider, that would make it less deep and therefore less functional. Mr. Hahr argued that making the garage wider would impede the view of the woods. He said they could figure out ten different ways to make it what they want, but what they want is to take what is existing and build it back. Mr. Harry Hahr said they've been on the lake since 1967, and there is not a compelling reason to change what they have.

Mr. Erik Hahr added that the only time one will see the depth of the garage is from the woods behind it. Hahr added that the woods is unused by definition of the Unified Development Ordinance, and that was a more compelling argument for a narrower garage.

Mr. Luepke commented that his question was regarding the lot length discrepancy. Mr. Harold Hahr stated when they bought the property in 1971, it was 100-feet long, but that went to the center of the road. He commented that when the garage next to them was built, the property pin

was on the fence. Hahr stated the survey is incorrect. Staff Schweitzer told the Board that there recently have been surveys of other garage lots in this area with legal description/deed discrepancies like the Hahrs.

Ms. Howarth stated the lot length would make a difference in how close the structure would be to the property line, but she believed the Hahrs have other options to build what they want and still meet the setbacks and lot coverage. Mr. Schmidt stated at 96-foot lot length, he could not support the project. Mr. Luepke stated one option would be to table the application until the discrepancy is resolved. The Board discussed the lot length discrepancy and if it needed to be solved before a decision could be made. Chairman Brown stated it was a self-imposed hardship either way, and the Hahrs lot is large enough to build what they want without building into the setback.

Chairman Brown entertained a motion. Mr. Luepke, in an effort to be fair to the applicant, asked in what ways they would be willing to make modifications. Mr. Harry Hahr stated the insulated structure panels come in 10-foot sections and he has already put a couple thousand dollars into the building. Building up the foundation solves the drainage problem, all they need to do is go back towards the rear property line. Mr. Erik Hahr stated the hardship is because of how they have designed the garage and anything else would not be ideal.

Chairman Brown entertained a motion about the case before the Board. Mr. Luepke entertained a motion to table the application until the discrepancy with regard to the lot length is resolved. Luepke added that the applicant needed to keep in mind that the answer may still be no. Chairman Brown asked for discussion on the motion. Mr. Schmidt recapped that the applicant has said no to making the garage wider; the applicant has said no to going closer to the road. Schmidt concluded the applicant is not willing to deviate from his plan, and the only thing that changes if the discrepancy is resolved is the length of the lot – either it is 100-feet or it is 96-feet. After the discussion, Mr. Luepke withdrew his motion.

Mr. Luepke made a motion to move forward with the findings of fact for Case #2016-01, a Development Standards Variance filed by Harold and Cheryl Hahr for the garage lot at 350 East Clear Lake. Mr. Schmidt seconded the motion. Motion carried with all in favor.

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 February 2, 2016; 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. Schmidt made a motion to accept Finding 1 as presented. Mr. Luepke seconded the motion. Motion carried with all voting in favor and zero voting against.

Finding 2: *The approval of the variance will be injurious to the public health, safety, morals and general welfare of the community because (a) impervious surfaces increase by over 400 square feet as a result of this project leading to more runoff.*

Mr. Luepke made a motion to accept Finding 2 as presented. Mr. Schmidt seconded the motion. Motion carried with all voting in favor and zero voting against.

Finding 3: *The use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner because (a) the value of the adjacent undeveloped AG parcel will be adversely affected because the proposed structure will be close enough to the shared property line to impact future development of the AG parcel.*

Mr. Luepke made a motion to accept Finding 3 as presented. Mr. Schmidt seconded the motion. Motion carried with all voting in favor of the motion and zero voting against.

Finding 4: *The strict application of the terms of the zoning ordinance will not result in practical difficulties in the use of the property because (a) the subject property does not have unique circumstances preventing it from being used for the construction of a new garage; (b) enforcement of the Minimum Rear Yard Setback and Maximum Lot Coverage regulations permit the applicant to construct a useable-sized garage on the property; and (c) the practical difficulty is self-created by the applicant's desire to utilize the existing footprint and the existing pavers.*

Mr. Luepke made a motion to accept Finding 4 as presented. Ms. Howarth seconded the motion. Motion carried with all voting in favor of the motion and zero voting against.

Chairman Brown entertained a motion for a final decision on Case #2016-01, a Development Standards Variance filed by Harold and Cheryl Hahr for the garage lot at 350 East Clear Lake Drive. Mr. Luepke made a motion to deny the variance request as presented. Mr. Schmidt seconded the motion. Motion carried with Chairman Brown, Ms. Howarth, Mr. Luepke, and Mr. Schmidt each voting in favor of the motion via a roll call vote.

Moving on to Old Business, Chairman Brown asked Board Members if they had reviewed the minutes from the December 21, 2015 meeting. Mr. Luepke made a motion to accept the minutes as presented. Mr. Luepke seconded the motion. Motion carried with three votes in favor and zero against. Ms. Howarth abstained because she was not present at the December meeting.

Chairman Brown told the Board it was time to elect officers for the Board. Mr. Luepke nominated Bonnie Brown to continue as Chairman of the Board of Zoning Appeals. Mr. Schmidt seconded the nomination. Hearing no other nominations, the Board voted four in favor of Brown continuing as Chairman and zero against. Brown asked for nominations for Vice Chairman. Mr. Luepke nominated Tom Schmidt to be Vice Chairman of the Board. Ms. Howarth seconded the nomination. Hearing no other nominations, the Board voted four in favor of Mr. Schmidt being the Vice Chairman of the Board and zero against. Mr. Luepke made a motion to appoint the Zoning Administrator as the Secretary of the Board. Mr. Schmidt seconded the appointment. The Board voted four in favor of the Zoning Administrator being the Secretary of the Board and zero against.

The Board discussed the Rules Committee. Chairman Brown asked about the new information that had been presented regarding group site visits. Mr. Hawk stated he would look into that prior to the next meeting.

Membership information for 2016 and meeting dates/filing deadlines for 2016 were distributed. Corrections were offered for membership information. The Board of Zoning Appeals agreed the meeting dates looked good. Those dates for 2016 are April 18, June 20, August 15, October 17, and December 19. The first meeting in 2017 will be February 20.

The Board discussed using the podium during hearings, having a gavel for the Chairman, and making the copies of the site plan available to the public during the meeting.

Chairman Brown asked for any other Old Business. Staff Schweitzer reported a modification to the project involved in Case # 2015-02 for the Gartners at 253 West Clear Lake Drive was authorized. The modification involves expanding an elevated deck, but the expansion complies with the Unified Development Ordinance.

Hearing no additional business, Mr. Schmidt made a motion to adjourn the meeting of the Clear Lake Board of Zoning Appeals. Mr. Luepke seconded the motion. Motion carried; meeting adjourned at 8:30 PM.

Respectfully Submitted:



Amy Schweitzer, Secretary

