

Town of Clear Lake - Board of Zoning Appeals Special Meeting Minutes – April 18, 2016

Chairman Bonnie Brown opened the April 18, 2016 Special Meeting of the Clear Lake Board of Zoning Appeals at 6:30 PM.

The following members of the Board were present:

Bonnie Brown, Chairman
Don Luepke
Jaclyn Howarth
Bruce Moody, Alternate for Ron Walters
Tom Schmidt, Vice-Chairman

Also present:

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

Brown determined a quorum was present before announcing the half hour session was for training and discussion purposes. Chairman Brown directed the Board's attention to Article 7 of the BZA's Rules of Procedure, entitled *Hearing Procedure*. After some discussion, Board members agreed to continue using the Hearing Procedure as outlined in the Rules of Procedure.

Board discussion continued with Findings of Fact, Practical Difficulties, and Unnecessary Hardships. Chairman Brown directed Board Member's attention to the *Indiana Citizen Planner's Guide* – specifically the one called *Avoiding Pitfalls*. The Board discussed making motions and how to make a good motion noting it should reference applicable criteria. In response to a question, Mr. Hawk stated a motion just brings an issue to a vote. The person making the motion does not necessarily have to support it although it makes more sense if he/she does.

The Board members who were present at a recent meeting of the Steuben County BZA discussed items they liked or did not like from that meeting.

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 6:54 PM.

Respectfully Submitted:

Amy Schweitzer, Secretary

Town of Clear Lake - Board of Zoning Appeals
Meeting Minutes – April 18, 2016

Chairman Bonnie Brown opened the April 18, 2016 Regular 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
Jaclyn Howarth
Bruce Moody, Alternate for Ron Walters
Tom Schmidt, Vice-Chairman

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 and read aloud the Board of Zoning Appeals' Duties and Procedures.

Brown asked for Case #2016-02, a Variance from Development Standards filed by Seth and Amanda Gleave at 693 South Clear Lake Drive. Mr. and Mrs. Gleave would like to construct a deck off the side of their cottage, but the proposed deck encroaches into the required 10-foot side yard setback.

Chairman Brown asked if the Staff had anything to offer. Schweitzer stated the 693 South Clear Lake Drive is zoned Single-family residential and is a back lot. The variance requested is minimum side yard setback, but it is in two different locations in the Unified Development Ordinance: Section 2.12 and Section 5.14. Legal notice was published on March 28 and posted at the Town Hall, the Pub, and the Marina. There were 6 adjacent property owners and 18 interested property owners. Schweitzer told the Board the request was pretty straight-forward.

Mr. Gleave introduced himself and told the Board that when he and his wife, Mandy, first purchased the property there was a deck in this location. Because of the failing structure of the cottage, the deck had to be removed immediately so the cottage could be leveled. They are ready to put the deck back where it was. A deck in this location would also allow them to use the existing sliding glass door. Without the deck, there is an 18-inch drop and that doesn't meet Building Codes. Stairs would need to extend out at least 3-feet from the sliding doors and interrupt their side yard. The reason they would like to add the deck is that it allows them to make use of their side yard.

In response to a question, Gleave stated that the deck would use standard 4x4 treated posts and composite deck board because composite holds its beauty a little longer than treated lumber.

Chairman Board entertained questions from the Board. Mr. Schmidt asked about the previous deck that existed. Gleave told the Board that the existing deck had to be removed right away so the foundation of the home could be shored up, and they never really measured it.

Chairman Brown asked if there was a provision in the Unified Development Ordinance that permitted the deck to be re-constructed, since it previously existed. Schweitzer stated that since no arrangements had been made before the previous deck had been removed, any new construction had to comply with the current standards.

Gleave told the Board that Ms. Dorothy Rettig, an adjacent property owner, told him that the existing deck had required a variance when it was installed. Mr. Moody asked about steps, and Gleave stated that there would be a set of steps off each end – one going toward the street and a second set going towards the backyard.

Mr. Luepke asked how close the proposed deck would be to the property line. Gleave stated 2-feet, adding that the biggest reason for the 8-foot width of the deck is because the lumber comes in 8-foot lengths. Chairman Brown asked about the door to the rear yard. Gleave stated the side yard is where they prefer to sit because Ms. Rettig, the neighbor, allows his kids to play in her empty garage lot. Gleave added that the room inside the sliding glass door is a bedroom, offering that their cottage is small. He told the Board the door to the back yard is never utilized and has never opened, adding that there is actually furniture in front of it on the inside.

Hearing no other questions, Staff Schweitzer told the Board that after notice had been given for the variance, Gleave approached her about adding a pergola to the variance request. In corresponding with Hawk, Schweitzer told Gleave that an additional provision should have been added to the Public Hearing Notice for the pergola and it was too late for that. However, there is a provision in the Article 9 that permits the Zoning Administrator to approve a modification of a variance if certain criteria are met, and the addition of a pergola meets that criteria. Schweitzer stated she had no intention of skirting the BZA, but understood how projects can grow. Attorney Mike Hawk added that the variance for the deck and the pergola is really the same issue – side yard setbacks.

Mr. Luepke mentioned that a pergola might impact views more so than a deck would. Mr. Moody asked how important it was that the pergola be built at the same time as the deck. Mr. Gleave stated it would be difficult to add the pergola at a later date, adding stated he would use larger 6 x 6 posts and the height of those posts would be different if the pergola ended up being part of the project.

Mr. Moody asked if there were any water flow problems. Mr. Gleave stated in the side yard there are no water flow problems and the deck will be off the ground so there will not be any disturbance. Gleave added that the back yard does have water problems and they have had water all the way up to the back door.

Mr. Schmidt asked about developing and the setbacks on the adjacent lot. Staff Schweitzer told the Board that the lot appears to be about 30-foot wide. A 5-foot side yard setback would leave a 20-foot wide building envelope, which is enough for a garage – not a large one, though.

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

Brown asked Staff for any comments received from the notice. Schweitzer read aloud the following:

- A letter from Daniel and Laura McArdle, 686 South Clear Lake Drive, in support of the Gleave's project and complimenting the Gleave's for the enhancement of the property.
- A letter from Alan and Brenda Stephens, 688 South Clear Lake Drive, stating they have no objections to the project and complimenting the Gleave's for being wonderful neighbors and improving the property.

Mr. Luepke asked about input from the adjoining owner to the west, Dorothy Rettig. Mr. Gleave stated that he spoke to all of the neighbors and all of them wished him the best of luck.

Chairman Brown asked for any comments in support of the project. After a brief pause, Brown asked for any comments in opposition to the project. After a brief pause, Brown asked for any comments concerning the project. Mrs. Emma Brown, 432 Point Park Drive, asked if the property was on the water. The Board told her no, the cottage was on a back lot. Ms. Anita Thiel, 926 South Clear Lake Drive, asked about the pergola. Chairman Brown said no decisions had been made at this time regarding the pergola.

Hearing no other comments or questions from the public, Mr. Luepke made a motion to close the Public Hearing portion of the meeting and reopen the regular meeting. Mr. Schmidt seconded the motion. Motion carried with all in favor.

Chairman Brown asked for comments and questions from Board members.

Mr. Luepke expressed concern that a 2-foot setback is so small, but added that there was not any objection from the neighbor. Board member Schmidt stated that the existing deck had come off out of necessity, and this project replaces what had existed for years. Schmidt stated there was a need to remedy the safety issue and make the sliding doors useable. Schmidt stated he was leaning in favor of the project because it seemed reasonable and there are no objections.

Chairman Brown stated the empty lot that is adjacent will probably be developed in the next 20-years. Brown suggested steps down to a sidewalk that leads to the rear of the cottage where a deck can be built without a variance.

Ms. Howarth stated she understands something needs to be done for the safety issue. She asked about cutting the lumber down to a smaller size so the deck would be less than 8-feet wide. Mr. Gleave stated that the lumber can be cut down, but he wanted the project to be an economic and efficient use of resources.

Mr. Luepke brought up the pergola and asked for details. Mr. Gleave stated it would be centered over the door and would be around 10-foot wide at the most. The Board agreed a pergola would provide shade and add depth to the cottage. In response to a question, Gleave stated he was unable to see the lake from that side of this cottage. There was discussion about the height of the pergola, and Gleave stated it would be about the same as the gutters which is 8-feet from the ground or 6-feet from the deck.

There was discussion about having a step down out of the door to give more head room under the pergola. Mr. Gleave stated he submitted his “ideal scenario” and added that the step would consume living space right in the center of the deck.

Mr. Moody made a motion to allow the Zoning Administrator’s discretion to approve the pergola. Mr. Schmidt seconded the motion. Motion carried with all voting in favor. Mr. Luepke made a motion that the pergola’s width on the door size should not exceed 10-feet. Mr. Schmidt seconded the motion. Motion carried with all in favor and zero against.

Chairman Brown entertained a motion to move forward with the Findings of Fact for Case #2016-02, a Development Standards Variance filed by Seth and Amanda Gleave for 693 South Clear Lake Drive for relief from Section 2.12, Minimum Side Yard Setback, and Section 5.14, Deck Standards. Mr. Schmidt provided the second.

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 28, 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. Luepke made a motion to accept Finding 1 as presented. Mr. Moody 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 deck will ~~be unnoticed by the public.~~ It will not impact drainage, views, or traffic circulation.*

Mr. Schmidt made a motion to accept Finding 2. Chairman Brown suggested removing “be unnoticed by the public. It will” because the deck will be noticeable by the public. Mr. Schmidt amended his motion to accept Finding 2 as modified. Mr. Moody seconded the amended 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 the subject property is consistent with the use of adjacent properties, and the proposed project will not change the use or the intensity of the use; and (b) the value of the adjacent properties will be unaffected because the proposed project will use high quality materials and is consistent with the development that exists.*

Mr. Luepke made a motion to accept Finding 3 as presented. There was discussion on the height of the deck before Mr. Moody seconded the motion. Motion carried with Luepke, Moody, and Schmidt voting in favor of the motion and Brown and Howarth voting against the motion.

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 exterior doors to the existing cottage along with the placement of the cottage on the lot creates a practical difficulty in the applicant's ability to safely enter/exit the cottage.*

There was some discussion about the “no” finding and about simply having steps to the sliding door before Mr. Luepke ultimately made a motion to accept Finding 4 as presented. Mr. Moody seconded the motion. Motion carried with five votes in favor and zero votes against.

Chairman Brown entertained a motion for final action for Case #2016-02, a Development Standards Variance filed by Seth and Amanda Gleave for 693 South Clear Lake Drive.

Mr. Luepke prompted the Board to consider conditions, asking what all was involved in an Administrative Subdivision, specifically with regard to cost. Mr. Moody made a motion to give the Zoning Administrator discretion with regard to the pergola as long as it didn't exceed 10-feet in width. Mr. Schmidt seconded motion. Motion carried with all in favor.

After the discussion, Mr. Luepke made a motion to Approve with Conditions the variance requested by Mr. and Mrs. Gleave for a deck project at 693 South Clear Lake Drive specifying the aforementioned condition about the pergola. Mr. Schmidt seconded the motion. Motion carried with Brown, Howarth, Luepke, Schmidt, and Moody voting in favor via a roll call vote, and no one voting against the motion.

Chairman Brown introduced case #2016-03, a Variance from Development Standards filed by Mike and Melanie Marhenke at 462 Point Park Drive to make some improvements to their existing decks. The improvements involve new steps and squaring off a corner. Both improvements encroach further into the required minimum lake yard setback than permitted by the Unified Development Ordinance.

Brown asked Staff Schweitzer for any comments. Staff Schweitzer told the Board that a new cottage had been built on an adjacent lot, and that cottage had been sited further from the lake than the previous cottage. This changed the “Established Building Setback Line” and lake yard setback for the Marhenke's making much of their existing decks legal-nonconforming. Schweitzer stated if the Marhenke's had asked to make these improvements to their deck a year earlier, they would not have needed a variance. Schweitzer also told the Board the new steps that are part of the project are actually scaled down from their original plan.

Mr. Marhenke introduced himself and his wife. He told the Board that they have been working to change out all the existing decking on the property from wood to aluminum and composite. He stated the proposed new steps from the existing lower level deck to the ground were much safer than what previously existed. He stated squaring off the upper deck added about 7.5 square feet, provided an ideal location for their grill, and improved the aesthetics of the upper level

deck. He stated all of the materials would match the portions of the existing decks that had been recently upgraded – with composite wood and railings. There was discussion about the depth of the treads on the stairs.

Mr. Luepke asked if squaring off the upper deck would impact the new cottage that is adjacent. Schweitzer stated it was not in their viewshed. Chairman Brown added that she had looked from the adjacent porch and the view was not impacted by the proposed project.

Hearing no other questions from the Board, Mr. Schmidt made a motion to close the regular meeting and open the Public Hearing. Mr. Luepke seconded the motion. Motion carried with all in favor. Chairman Brown asked if any correspondence had been received in the office concerning the Marhenke's variance request. Schweitzer read aloud a fax from Jennifer and William Brady, owners of the property adjacent to them. The fax stated the Brady's are aware of the public hearing and are in full support of the variance request stating the changes will be a great enhancement.

Chairman Brown asked for comments in opposition to the project. After a brief pause and hearing nothing, Brown asked for comments in support of the project. After a brief pause, Brown asked for any comments on the project. After a brief pause, Brown entertained a motion to close the Public Hearing portion of the meeting and open the regular meeting. Mr. Moody made a motion to close the Public Hearing portion of the meeting and open the regular meeting. Mr. Schmidt seconded the motion. Motion carried with all in favor and zero against.

Mr. Schmidt made a motion to move forward with the Findings of Fact for Case #2016-03, a Development Standards Variance filed by Mike and Melanie Marhenke for 462 Point Park Drive. Mr. Luepke seconded the motion. Motion carried with all in favor.

Chairman Brown announced the Board would make findings of fact for Case #2016-03, Mike and Melanie Marhenke at 462 Point Park Drive. The request is for relief from Section 2.14 *Minimum Lake Yard Setback* and Section 5.15 *Deck Standards*.

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 28, 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. Luepke made a motion to accept Finding 1 as presented. Mr. Moody seconded the motion. Motion carried with five votes in favor of the motion and zero votes 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 project will be unnoticed by the public and not impact views from adjacent properties, drainage, or traffic circulation; and (b) the proposed project primarily addresses safety issues with the existing decks.*

Mr. Moody made a motion to accept Finding 2 as presented. Mr. Luepke seconded the motion. Motion carried with five votes in favor of the motion and zero votes 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 the subject property is consistent with the use of adjacent properties, and there will be no change in use or intensity of use; and (b) the value of the adjacent properties will be unaffected by the proposed project.*

Mr. Schmidt made a motion to accept Finding 3 as presented. Mr. Luepke seconded the motion. Motion carried with five votes in favor of the motion and zero votes 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 recent construction of an adjacent house has created a practical difficulty because the new construction has resulted in a more restrictive established building setback line for the applicant making a majority of the decks legal non-conforming. The proposed improvements primarily address safety and practicality issues with the existing decks.*

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

Chairman Brown entertained a motion for a final decision on Case #2016-03, a Development Standards Variance filed by Mike and Melanie Marhenke for 462 Point Park Drive. Mr. Moody made a motion to approve the variance request as presented. Mr. Schmidt seconded the motion. Motion carried with Chairman Brown, Ms. Howarth, Mr. Luepke, Mr. Moody, and Mr. Schmidt all voting in favor of the motion via a roll call vote.

Chairman Brown asked about the Breeden case. Schweitzer explained the timeframe for getting public notice out is sometimes tight, and in this case public notice was given prior to a thorough review of the application. Upon a thorough review, Schweitzer discovered a Plat Condition for the Ziems Subdivision Plat that prohibited connection to sewer for the garages. At that point, Ms. Breeden was not interested in pursuing an amendment to the plat conditions and decided to withdraw her request.

Chairman Brown asked the Board if they had reviewed the minutes from the February 15, 2016 Special Meeting of the Board of Zoning Appeals. Mr. Luepke made a motion to approve the minutes of the February 15 Special Meeting. Mr. Schmidt seconded the motion. Motion carried with four votes in favor of the motion, zero votes against the motion, and Mr. Moody abstaining because he was not present at the February 15 meeting.

Chairman Brown asked the Board if they had reviewed the minutes from the February 15, 2016 Regular Meeting of the Board of Zoning Appeals. Mr. Luepke made a motion to approve the minutes of the February 15 Regular Meeting as presented. Ms. Howarth seconded the motion. Motion carried with four votes in favor of the motion, zero votes against the motion, and Mr. Moody abstaining because he was not present at the February 15 meeting.

Chairman Brown asked for New Business. Staff Schweitzer told the Board she had recently become aware of a service offered by the US Post Office called a “Certificate of Mailing.” This service includes the Post Office certifying that mail was sent to a specific address on a specific date. Schweitzer recommended using this service, as opposed to the Certified Mail, Return Receipt Requested because the cost difference is substantial. Each Certified Mail is \$6.74 and the Certificate of Mailing service is only \$1.35. The Board agreed the Certificate of Mailing was a good alternative. Schweitzer agreed to draft an amendment to the Board’s Rules of Procedure to reflect the change for the next meeting.

Attorney Michael Hawk reported that the Open Door Law did permit the entire BZA to conduct a site visit, but the Board needs to be cautious about what discussion is had at those site visits. Mr. Hawk indicated he did want to have a conversation with the Public Access Counselor to discuss those details, and he would report those findings at the next meeting.

Chairman Bonnie Brown announced the next Board of Zoning Appeals meeting will be June 18, 2016 at 7 PM. The deadline for applications is May 23. Schweitzer told the Board that no variances had been filed, but a couple of packets had been distributed.

Hearing no other business, Mr. Luepke made a motion to adjourn. Mr. Schmidt seconded the motion. Motion carried; meeting adjourned at approximately 8:30 PM.

Respectfully Submitted:

Amy Schweitzer, Secretary