

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

Chairman Bonnie Brown opened the August 15, 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
Jaelyn Howarth
Bruce Moody, Alternate for Ron Walters

Also present:

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.

Chairman Brown stated the Board would hear Case #2016-06, a Variance from Development Standards filed by Charles Isaac at 590 East Clear Lake Drive. Mr. Isaac would like to install a generator in his side yard setback.

Mr. Isaac thanked the Board for listening to his variance application. Mr. Isaac indicated that he lives year round at Clear Lake. He would like to install a generator for times when power goes out. He said the only location it would fit is on the south side of his cottage. He indicated that his wife is terminally ill and she has been struggling for some time. He said it is challenging for her to move around under normal conditions and that with a power outage it is easy for her to lose her balance. He then discussed the findings of fact. He indicated the generator will be installed next to the existing air conditioner unit and that it is the only place that will meet fire and safety codes. He then presented a letter from Bob and Nancy Webster, his neighbor to the south, that indicated that they have no objections to the installation.

Mr. Moody asked who would be installing the generator. Mr. Isaac said he has not signed a contract but that it would probably be Bill Scheuman Jr.

Mr. Luepke asked if there was room on the other side for emergency services to access the lake yard. Mr. Isaac said there is.

Mr. Moody moved to close the meeting and open the public hearing. The motion was seconded by Mr. Luepke. The motion carried.

Chairman Brown asked for public comment.

No interested parties appeared. No correspondence has been received on the project at the time of the meeting.

Mr. Luepke moved to close the public hearing and move back into the regular meeting. Mr. Moody seconded. The motion carried.

Mr. Luepke said that he did not have any concerns on this project. Mr. Moody concurred. Ms. Howarth concurred as well.

Mr. Luepke moved to approve the **first finding**:

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, 2016.*
- b. Notice has been made to appropriate land owners as shown by the stamped receipts from the US Post Office and tracking information has been printed and is in the file.*

Mr. Moody seconded the motion. The motion carried with all members in support, none opposing.

Mr. Moody moved to approve the **second finding**:

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 house with access to the lake via the other side of the house.*
- b. The proposed generator is residential-grade and consistent with generators typically installed at residences.*
- c. The proposed generator will not impact drainage, views, or accessibility in this area.*

Mr. Luepke seconded the motion. The motion carried with all members in support, none opposing.

Mr. Luepke moved to approve the **third finding**:

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.*
- b. The proposed generator will be installed by professionals and is residential-grade equipment.*
- c. The value of the adjacent properties will be unaffected by the proposed project.*

Ms. Howarth seconded the motion. The motion carried with all members in support, none opposing.

Mr. Moody moved to approve the **fourth finding**:

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. There is no place on the property to install the generator and meet the required building setback lines.

Mr. Luepke seconded the motion. The motion carried with all members in support, none opposing.

Mr. Moody moved to approve the variance application 2016-06. The motion was seconded by Mr. Luepke. The motion was approved by all members.

Variance 2016-06 for Mr. Charles Isaac is hereby approved.

Chairman Brown stated the Board would hear Case #2016-07, a Variance from Development Standards filed by John and Jan Jarrett at 1112 South Clear Lake Drive. Their proposed single-family dwelling will encroach into the lake yard setback and horizontally protected viewshed.

Mrs. Jarrett gave the presentation for her variance. She then gave a history of the property, which they have owned since 1976. They have made many improvements to the cottage. She then presented a number of existing issues for the cottage. She indicated that they wanted to have a home capable of having all of their children present and something that can be used all year instead of just during the summer. She then discussed the lake yard setback. She indicated that the Hoagland house to one side is too close to the road and the McCracken house is too close to the lake and that going one further on either side provides that the lake yard setback is met. She discussed the blocked view provided by the arborvitae on the Hoagland property.

Mr. Luepke asked if this is their permanent residence now and if they desired to make it their permanent residence. The Jarretts indicated that it is not their permanent residence but they would possibly like to become their permanent residence.

Mr. Luepke then discussed the difficulty in understanding the stakes placed on the property. There was then discussion of where things would be located.

Chairman Brown then inquired about the floor plans for the house.

Chairman Brown asked for a motion to close the meeting and enter the public hearing. Mr. Luepke so moved and Mr. Moody seconded the motion. The motion carried with all in favor, none opposing.

Chairman Brown indicated that there were two correspondences received. One from Mrs. Nevin and one from Terry Heckman. Both letters were in favor of the variance request. (The correspondence received are on file.)

Chairman Brown then asked for public comment from the audience.

Mr. McCracken at 1110 South Clear Lake Drive provided comments on the project. He said he is concerned about the height of the proposed home. He also said that it appeared the patio is over the grinder pump.

Acting Administrator Folland indicated that the project's height is in conformance with the UDO standards.

Mr. Delagrance, the contractor, indicated that it will be in compliance. He also said that the home will be a little below street level since driveways may not slope towards the road.

Mr. Delagrance discussed the viewshed and the fact that there is a practical difficulty because of the location of the home to the north.

Chairman Brown asked about the grinder pump. Mr. Delagrance said it has to be moved and would be moved to the street level.

Mr. Luepke moved to close the public hearing and reopen the meeting. Ms. Howarth seconded the motion. The motion carried with all members in favor, none opposing.

Mr. Luepke said he understands the difficulty with the viewshed. He then said that the arborvitae could be cut down and that its existence does not provide reason to grant the viewshed exception.

Mr. Moody said that it is bothersome to him to disregard the UDO. He understands that there are difficulties in this case.

Ms. Howarth said she understands the need for the second garage but she wonders if one were eliminated, the house could be pulled back, closer to the street.

There was then discussion about the different findings required and possibilities. The Board discussed possible conditions for changing the lake yard setback.

Chairman Brown discussed the blocked viewshed given by the arborvitae at the home to the north of the Jarretts. Mr. Moody said that any new owner could tear it out. Chairman Brown inquired if we need to consider the way things are now or unknown futures.

Mr. Moody indicated that he is not comfortable with disregarding the UDO. Chairman Brown said that the purpose of the BZA is to remedy unique situations like this in waiving the strict terms of the ordinance as written.

Mr. Luepke moved to go onto the findings of fact for the viewshed. Mr. Moody seconded the motion. The motion carried with all in favor, none opposing.

Mr. Moody moved to approve the **first finding**:

Legal notice of the petition has been provided in accordance with Indiana Code and Notice has been made to appropriate land owners because

- c. Legal notice of the application was published in the Herald Republican Newspaper on August 5, 2016.*
- d. Notice has been made to appropriate land owners as shown by the stamped receipts from the US Post Office and tracking information has been printed and is in the file.*

Mr. Luepke seconded the motion. The motion carried with all members in support, none opposing.

Mr. Luepke moved to approve the **second finding**:

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 not impact the drainage or traffic along South Clear Lake Drive.*
- b. *The proposed new residence will be located further from the lake than the adjacent property owner to the south and will not obstruct the view of the adjacent property owner to north as that owner maintains a line of arborvitae beyond the point of the proposed construction.*

Mr. Moody seconded the motion. The motion carried with all members in support, none opposing.

Mr. Moody moved to approve the **third finding**:

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 which is residential and there will be no change in use as a result of this project.*
- b. *The proposed new residence will be constructed of high quality materials, is appropriately-sized for the lot, and will support, maintain or improve adjacent property values.*

Mr. Luepke seconded the motion. The motion carried with all members in support, none opposing.

Mr. Luepke moved to approve the **fourth finding**:

The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because

- a. *When applied to this scenario, a practical difficulty exists because the Horizontally Protected Viewshed includes nearly half the subject lot leaving a very small building envelope for a new residence.*
- b. *The adjacent property owner to the north has existing arborvitae within the required Horizontally Protected Viewshed which limits their view of adjacent property.*
- c. *The adjacent residences were constructed prior to the current UDO. The residence to the north is closer to the street than permitted and the subsequent setback is further from the lake than normal.*

Ms. Howarth seconded the motion. The motion carried with three in favor, and Mr. Moody opposed.

Mr. Luepke moved to approve the variance application 2016-07 for the horizontally protected viewshed. The motion was seconded by Ms. Howarth. The motion was approved by Chairman Brown, Mr. Luepke, and Ms. Howarth. It was opposed by Mr. Moody.

The Board then discussed the options with the elevated deck and lake yard.

Mr. Luepke discussed the possibility of removing the section of the elevated deck that crosses the setback line.

Mr. Moody continued his objection to disregarding the UDO.

Mr. Luepke moved to require the elevated deck to remain behind the elevated deck setback line as depicted on the drawing. Ms. Howarth seconded the motion. The motion carried with three in favor, one opposed.

Chairman Brown moved to adopt a condition on contractor parking. It read: "Four off-street parking spaces for construction vehicle parking shall be identified prior an Improvement Location Permit being issued. Construction parking shall not be on the street but may be located on adjacent properties with permission from property owners. Contractors shall be required to keep the street free of construction vehicles, mud, dirt, debris for the duration of the project." Mr. Moody seconded the motion. The motion to adopt the condition carried with all members in favor, none opposing.

Mr. Luepke moved to continue with the Findings of Fact. Mr. Moody seconded the motion. The motion carried with all members in favor, none opposing.

Mr. Moody moved to approve the **first finding**:

Legal notice of the petition has been provided in accordance with Indiana Code and Notice has been made to appropriate land owners because

- e. Legal notice of the application was published in the Herald Republican Newspaper on August 5, 2016.*
- f. Notice has been made to appropriate land owners as shown by the stamped receipts from the US Post Office and tracking information has been printed and is in the file.*

Mr. Luepke seconded the motion. The motion carried with all members in support, none opposing.

Mr. Luepke moved to approve the **second finding**:

The approval of the variance will not be injurious to the public health, safety, morals and general welfare of the community because

- c. The proposed new residence will be constructed of high quality materials, is appropriately-sized for the lot, and not impact the drainage or traffic along South Clear Lake Drive.*
- d. The proposed new residence will be located further from the lake than the adjacent property owner to the south and will not obstruct the view of the adjacent property owner to north as that owner maintains a line of arborvitae beyond the point of the proposed construction.*

Ms. Howarth seconded the motion. The motion carried with all members in support, none opposing.

Mr. Moody moved to approve the **third finding**:

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

- c. The use of the subject property is consistent with the use of adjacent properties which is residential and there will be no change in use as a result of this project.*
- d. The proposed new residence will be constructed of high quality materials, is appropriately-sized for the lot, and will support, maintain or improve adjacent property values.*

Mr. Luepke seconded the motion. The motion carried with all members in support, none opposing.

Mr. Luepke moved to approve the **fourth finding**:

The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because

- a. When applied to this scenario, a practical difficulty exists because the Lake Yard Setback and Deck Standards render nearly half the subject lot unbuildable leaving a very small building envelope for a new residence.*
- b. The adjacent residences were constructed prior to the enactment of the UDO. The residence to the north is closer to the street than is currently permitted. As such, the applicable setback is further from the lake than if the residence conformed with the current UDO.*

Ms. Howarth seconded the motion. The motion carried with three in favor, and Mr. Moody opposed.

Mr. Luepke moved to approve with conditions variance application 2016-07 for the lake yard setback and elevated deck standard. The motion was seconded by Ms. Howarth. The motion was approved by Chairman Brown, Mr. Luepke, and Ms. Howarth. It was opposed by Mr. Moody.

Variance 2016-07 for the horizontally protected viewshed, the lake yard setback, and elevated deck setback (as amended) for Mr. and Mrs. Jarrett is hereby approved.

Chairman Brown brought up the issues with the labeling of stakes on properties. It was decided to wait until the next meeting to discuss the matter further. Mr. Moody moved to require labeling of staking materials for variance applications. Chairman Brown seconded the motion. The motion carried with all members in favor, none opposed.

Hearing no other business, Chairman Brown adjourned the meeting. Meeting adjourned at approximately 9:00 PM.

Respectfully Submitted:

Kenneth J. Hughes, Secretary