

Town of Clear Lake – Board of Zoning Appeals

Meeting Minutes – February 8, 2022

Chairman Kit Tyler called meeting to order at 7:00pm.

Chairman K. Tyler starts with some comments for the BZA members and the attending residents. There has been a significant written response for this meeting and thanks the public for their interest. It is the BZA's intent to read all written correspondence, however given the number of emails and letters, we expect the meeting to be a bit lengthy and therefore modifying the order of proceedings during the public hearing, section 7.4 (d), allowing in-person and phone comments first, followed by mail and email, for each supporting and then opposing comments. Resident's attending are encouraged to stay throughout the meeting, but this will ensure anyone needing to leave early, the ability to participate.

Attorney Mike Hawk: Kit asked me to advise the BZA members, because of the number of email correspondences that came in and the concern by staff that all the BZA members emails were included on the website, that people were being encouraged to contact you directly regarding this variance. Under Indiana law, a person is not allowed to contact a BZA member outside of a public meeting, that is considered ex-parte communication, but from my understanding most of those, if not all, came from email, so instead of duplicating that conclusion of the reading of emails, if any of you have had any ex-parte communication or someone has tried to contact you directly and you feel the need to disclose that, that would be the appropriate time to disclose that or make mention of that, to be fair to the petition.

Chairman K. Tyler thanks the community again for their involvement in the governing process. To improve communication and continue to encourage community involvement, Town Council has mailed a survey to residents and would appreciate your support in a timely response, to guide our efforts in timely communication and assess to public meetings. I also want to add that we have a lot of people and a lot of things to cover tonight. I am going to ask for respect to everyone making testimony, if you want to make some side comments to your neighbor, please hold them to after the testimony is being made or take them outside.

Roll Call:

Jim McClain, 1126 Quiet Harbor Drive, was asked to recuse himself by the BZA and PC President's, because he is an immediate neighbor to the Walter's.

Larry Lillmars, Zoning Administrator

Jennifer Sattison, Town Clerk

Walter (Mokey) Grabowski, 254 West Clear Lake Drive

Cecil Fleeman, 240 Penner Drive

Kit Tyler, 280 Penner Drive

Scott Lazur, 1108 South Clear Lake Drive

Don Luepke (Alternate), 1057 South Clear Lake Drive

Michael Hawk, Attorney for the BZA

There were 20 audience attendees (see attached sign-in sheet), 14 attendees via teleconference and 9 residents signed up to speak (see attached forms).

First variance is 2022-01, request for variance from developmental standards for Kenneth and Linda Walter, 1224 Quiet Harbor Drive, Fremont, IN 46737. They request relief from UDO Article 5.09 C 2 (a) LA Accessory Structure Standards/Quantity and Size/Maximum Size. The proposed project includes building a garage that exceeds the maximum size of 1200 square feet by 144 square feet.

Ken Walter, 1224 Quiet Harbor Drive: We want to build a storage garage across from our home. We are requesting a 1344 square foot structure, which the UDO states you can have a 1200 square foot garage and a 144 square foot shed totaling 1344 square feet. Where we are on Quiet Harbor Drive, there are nine lots, if everyone built their garage and their shed, there would be 18 buildings on that stretch of lots. This has nothing to do with funneling. One building would look cleaner than multiple buildings.

Chairman K. Tyler: No discussion of height allowed.

Chairman K. Tyler asks if anyone on the board has questions.

D. Luepke: Do you have a garage on that property now?

K. Walter: Yes.

D. Luepke: If it were empty, how many vehicles could you fit into that current garage?

K. Walter: Three (3).

Motion to open for public comments.

Motion by: D. Luepke

To open for public comments.

2nd by: S. Lazur

All in favor, motion carried.

Chairman K. Tyler begins with oppositions first.

George Schenkel, 144 West Clear Lake Drive, why are we here rehashing a request that is very similar to an UDO that was unanimously tabled by the Town Council in November. There were participants and emails, that came into the council regarding that UDO change and there was not one email that supported the change in the UDO at that time. The only finding of fact that should be voted yes on is that legal notice was given. There are several reasons why the other three findings of facts should be voted no on, one, the proposed increase in size does not meet the required UDO and would be injurious to the welfare of the community. Second, we need to consider incrementalism, the current plan is 1200 square feet, if allowed a variance of 1344 square feet, what is next, 1400, 1500, 1600 square feet? If we need a difference in square footage, that needs to go to the Plan Commission and the Town Council, we do not need to set precedent, if this is opened today, you are going to have eight more coming in behind, then suddenly, the BZA is going to be doing the work of the Plan Commission and the Town Council. I ask you to vote against the three other findings of facts.

Chairman K. Tyler let the attendees know that, if commenting, there is a five-minute limit.

John Jarrett, 1112 South Clear Lake Drive: In opposition because someone puts up a garage and suddenly there is a bedroom, a bathroom and then people living there. Now it's not considered a garage, it is a house. If this gets approved there are going to be other people around the lake that are going to do the same. If you approve this, you have now set a precedent, when the next person is wanting to do the same, how can you deny them? Why do we have a UDO and all these regulations?

John Starner (Phone), 486 East Clear Lake Drive: I am in opposition and agree with many things that George Schenkel said. Should stick with the current UDO.

Julie Waterfield (Phone), 262 Lakeview Drive: In opposition as much as I know about it. I am still studying.
Chairman K. Tyler asks for attendees that would like to speak in favor of the variance.

Troy Gamble, 40 West Clear Lake Drive & 1232 Quiet Harbor Drive: I am in support of the request. The UDO has been in place for a long time and in my opinion should be a living document. This lake has changed a lot over the last 10, 20, 30 years. There has been a lot of development. I see a lot of garages around the lake full of stuff, I don't see them using their various size garages as an additional house or rental. I do see people lacking storage space, it is not just a fishing boat on Clear Lake, there are pontoons, jet skis, paddle boards, etc., I do not know if the 1200 square feet is necessarily enough. I do know by combining the two, it looks aesthetically pleasing. It looks a lot better when the house and the garage match, it improves the esthetics of the lake.

Darin Thorp, 1236 Quiet Harbor Drive: Over the last few weeks it has been like watching bad media, some residents have taken a small amount of truth and added hype. What people failed to acknowledge; is we can already build at 1344 square feet. We are not adding anything and living in Quiet Harbor I would rather see a 1344 square foot building rather than a 1200 and a 144 square foot shed. It helps the aesthetics and drives up the property value. In favor of increase to 1344 square feet building.

Gwen McClain, 1226 Quiet Harbor Drive: Supports variance. Not sure how it has snowballed from wanting to build a slightly larger garage into having rentals and going to destroy the lake, which are all rumors. Ken's variance states that he is not hooking up plumbing or putting in a kitchen, to me, not having plumbing or a kitchen in a house is considered a garage. All these emails and all this misinformation about Ken building a house has gotten blown out of proportion and has become personal attacks to Ken and the residents of Quiet Harbor. The Walter's property is beautiful and the nicest neighbors. They want to put one large building rather than two smaller ones. Eighteen buildings on that little stretch of property will look ridiculous, I personally, would rather have one garage that matches my house.

Brent Schlosser, 95 Penner Drive: Question is directed to Mr. Hawke, should this variance be approved for additional square footage, would that also allow the property to put in a secondary structure?

Zoning Administrator L. Lillmars: You would not be able to add another structure because the overall UDO only allows 1344 square feet combined. If you hit the max of 1344 with the variance than you would not be allowed to put in another structure.

Chairman K. Tyler asks for any other comments or questions for or against the variance.

No additional comments or questions.

The Board of Zoning Committee begins to read emails and letters that were submitted in opposition and in favor of variance 2022-01 at 37 minutes and 19 seconds into the meeting.

The Board of Zoning Committee read through 82 opposition emails and letters and 16 in favor emails and letters for variance 2022-01, ending at 2 hours, 58 minutes, and 2 seconds into meeting.

Attorney M. Hawk: If anyone has any other communications on the BZA that needs to be shared? No.

Ken Walters: First, apologizes that this was going to be this kind of affair. Some of the letters were entertaining, most were redundant, some were heartfelt, and most were irrelevant. They are telling me I am going to be putting in an apartment, I am not. They tell me I am going to have an ecological effect on the lake, I guess like every other garage on this lake. They tell me I am accused of funneling. I am building a garage. No one will be living in it, I am not going to rent it, I will be putting my stuff in it. The timing, I needed a garage, that's why I did it now. If I can build it in the summer, I can utilize it, if not than I must find a place to store my stuff that much longer. They say I am going to affect the pristine

lake with my one garage, every other garage is doing the same thing than. I am going to provide more housing and living space, I am not, that is not what I asked for. Lake population will increase, Linda and I live there, our kids come once a year. I never knew I had the ability to destroy Clear Lake like this and I don't want to. I have no desire to overpopulate this lake, never have and never will. They say it is going to be an eyesore. I can guarantee you that the garage I build will look like the house and will look as good or better than most garages around Clear Lake. For someone to say it will look like an eyesore is insulting at best. This will create over development. This is a garage lot, there will be no other development other than garages. That is what they are zoned for. When they asked if I would like a bathroom, I said yes, it would be nice at my advanced age to have a bathroom over there, so I don't have to walk back and forth. I don't think that was ridiculous to ask for, but if you can't have it than you can't have it, so I am not going to get it, but I still need the storage.

Chairman K. Tyler asks for any more public comments.

Brent Schlosser, 95 Penner Drive: Due to numerous comments, I would like to state my appreciation to the town of Clear Lake, that it does have the ability of our Town Council, BZA and the Planning Commission to operate year-round. If the Town Council and the Planning Commission were limited to only portions of the year, they would not be able to meet the required demands, so the residents and property owners have a functional government. That functional government is critical to maintaining the Clear Lake community that many of us love. Personally, supports having year-round hearings.

George Schenkel, 144 West Clear Lake Drive: Supports the BZA year-round, some things need to be pushed from the winter months. Not this variance. Still opposed to the variance.

Motion to close public comments.

Motion by: D. Luepke

To close public comments.

2nd by: C. Fleeman

All in favor, motion carried.

The BZA takes a short break.

Motion to reconvene the meeting.

Motion by: C. Fleeman

To reconvene the meeting.

2nd by: S. Lazur

All in favor, motion carried.

Chairman K. Tyler reads one more email.

Motion to close public comments.

Motion by: S. Lazur

To close public comments.

2nd by: D. Luepke

All in favor, motion carried.

Zoning Administrator L. Lillmars reads through the summary of the staff report.

S. Lazur: As it sits right now with the UDO, you can have a 1200 square foot garage with no setbacks and a 144 square foot shed, correct? Yes.

Chairman K. Tyler to Ken Walters: Is it because you need the 1344 square feet or is it because that is what you are allowed? Do you absolutely need to have more than 1200 square feet?

Ken Walters: Adding onto it, sometimes can be awkward because I can't add on to the side and I can't add on to the front because I am too close to the road. I asked for the most because, just like my present garage, thought it was plenty adequate when I built it 20 years ago, not even close now.

Chairman K. Tyler to Ken Walters: One of our findings of facts is on hardship, could you please explain, why it would be a hardship not to be able to build a garage that size.

Ken Walters: If I can build it now and not have to add onto it later, it is always more expensive to add onto, rather than doing it the first time around. We sold our house in Fort Wayne that had a 1400 square foot garage. I have some of that stuff, several cars and would like a few more cars, but I need to have a place to put them.

W. Grabowski to L. Lillmars: If Mr. Walters wanted to build the 1200 then the 144, could it be hooked or does it have to be a separate structure? It would have to have a foundation and a separate roof?

Zoning Administrator L. Lillmars: Yes, it is considered one structure and according to the UDO, you can only have 1200 square feet in one structure.

Chairman K. Tyler reads through the comprehensive plan.

Findings of Fact Worksheet #2002-01 Walter 1224 Quiet Harbor Drive.

Variance: UDO Article 5.09 C 2 (a) LA Accessory Structure Standards/Quantity and Size/Maximum Size.

The proposed project includes building a garage that exceeds the maximum size of 1200 square feet by 144 square feet.

Findings of Fact #1: Legal notice of the petition has been provided in accordance with Indiana Code and Notice has been made to appropriate landowners.

Zoning Administrator L. Lillmars: Yes, I have the mailings and the newspaper clippings.

D. Luepke: Yes, because legal notice of the application was published in the Herald Republican Newspaper on January 27, 2022. Notice has been made to appropriate landowners as shown by the US Post Office return receipts (green cards) and a list of 1st class mail recipients that are in the Town's possession.

2nd by: S. Luepke

All in favor, motion carried.

Finding of Fact #2: The approval of the variance will not be injurious to the public health, safety, morals, and general welfare of the community.

Chairman K. Tyler: No, the approval of the variance will be injurious because the proposed increase size of the garage is not appropriate for a Lake Accessory zoned lot.

2nd by: S. Luepke

All in favor, motion carried.

Attorney M. Hawk: Need to have a positive finding for all four. If you vote no on any one of the four findings of facts, you have not met all the statutory requirements and the variance is dead.

Roll call vote:

K. Tyler: Deny

C. Fleeman: Deny

S. Luepke: Deny

W. Grabowski: Deny

D. Luepke: Deny

2022-01, the decision is to deny.

Height variance

K. Tyler asked Ken Walters if he would like to speak for the height variance.

Ken Walters: It's kind of irrelevant. Requesting a height variance from 18' to 23'3½". Reason for the request is for the building to be complementary to the adjacent residential building. I am requesting a 10-12 pitch. I was going to suggest changing my garage pitch to 8-12 and it would end up being 20'9". The height would help with the additional storage upstairs. I did not understand that additional height would block the view of property owners, because 700 east and west of me is farmland, then there's a street and farmland further west. I don't think it will affect anyone's view, not anymore than my house, which is 33' high. A lot of these new houses are 35' high, so I don't understand why my garage would obstruct the view. There were so many untrue statements in those letters and emails.

Chairman K. Tyler asked Ken Walters if he was withdrawing his second variance request, or do you want us to proceed?

Ken Walters: I was going to suggest I change it to the 8-12 pitch roof and 20'9".

Zoning Administrator L. Lillmars: Could we put it through as a condition for a shorter height?

Attorney M. Hawk: Can impose a condition for the pitch.

Chairman K. Tyler: What is the height?

Ken Walters: 20'9" at 1344 square feet if we keep it at 32' wide.

Zoning Administrator L. Lillmars: Would we need to have a motion to introduce a condition?

Attorney M. Hawk: Yes, but all the findings of facts would need to be a yes.

Chairman K. Tyler asks for any more questions or comments from the board.

No questions or comments.

Motion to open for public comment.

Motion by: D. Luepke

To open for public comment.

2nd by: C. Fleeman

All in favor, motion carried.

Ken Walters: Can I go ahead and withdraw my variance?

Attorney M. Hawk: Is that what you want to do is withdraw the variance?

Ken Walters: Yes.

George Schenkel, 144 West Clear Lake Drive: If he is withdrawing, does that push it out a year or can he represent it? If it's denied, I think it must be pushed out a year.

Attorney M. Hawk: That is correct.

Zoning Administrator L. Lillmars: I thought there must be a change in circumstance to represent it?

Since the application was withdrawn and accepted, Mr. Walters will be able to apply for a new variance on max height requirement at any time going forward.

John Wilhelm, 206 West Clear Lake Drive: Anytime we are changing the character of the request, it must be a new variance request rather than adjusting this request to meet certain needs.

Darin Thorpe, 1236 Quiet Harbor Drive: At the beginning of all this, we asked a certain board member to recuse himself from voting. This was done because of an assumed bias being a neighbor, correct?

Chairman K. Tyler: Correct.

Darin Thorpe: Under what Indiana law is that found?

Zoning Administrator L. Lillmars: It was Jim's decision to recuse himself. We came together as a group to discuss and talking with Attorney M. Hawk, it ultimately had to be Jim's decision.

Darin Thorpe: It was a perceived bias, correct?

Chairman K. Tyler: We had a discussion with Attorney M. Hawk there to determine and left it up to Jim. He recused himself.

Attorney M. Hawk: There is an Indiana statute that says any Board of Zoning appeals member that has a direct or indirect benefit of the property, has a conflict of interest. That was raised to Jim, and he recused himself.

Darin Thorpe: Any member that has been outspoken against these types of variances would have a bias opinion.

M. Hawk: It's more if you have a direct or indirect impact on them. I can pull the code section for more specifics.

Darin Thorpe: Indiana code 36 7-4-909 titled Board of zoning appeals; members; conflict of interest; disqualification. Under Section 909 (a) A member of a board of zoning appeals is disqualified and may not participate in a hearing or decision of that board concerning a zoning matter if the member: (1) is biased or prejudiced or otherwise unable to be impartial.

I would challenge you to find the PC minutes where one of your board members spoke against these variances. So, he should have recused himself from this group.

Board Member: This should have been raised at the beginning of the hearing.

Darin Thorpe: No, you guys should have looked it up first before you appointed him.
Attorney M. Hawk: How are we supposed to do that without someone calling a conflict?

Darin Thorpe: I am saying this was illegal.

Attorney M. Hawk: I disagree. Every single BZA member comes to the BZA with their own ideas or bias.....

Darin Thorpe: (Don Luepke) voiced opposition twice on the exact same things you just voted on.

J. McClain: I brought this point up when we met.

Attorney D. Hawk: So how would you constitute a BZA, if your BZA members ever spoke out on any zoning issues?

Darin Thorpe: It's in the minutes. I am saying it was a conflict of interest to be voting tonight.

Attorney M. Hawk: I disagree, but it is noted.

Motion to close public comment.

Motion by: C. Fleeman

To close public comment.

2nd by: W. Grabowski

All in favor, motion carried.

Old Business – None.

J. McClain: Is the variance over?

Chairman K. Tyler: Yes.

J. McClain: Then I am coming back to my seat.

New Business

Motion to approve minutes from the December 31, 2021, meeting.

Motion by: C. Fleeman

To approve minutes.

2nd by: W. Grabowski

All in favor. J. McClain, abstain

Election of officers for 2022. President and Vice President.

President nominations

Chairman K. Tyler nominates Jim McClain.

2nd by: C. Fleeman

Motion to close BZA President nominations.

Motion by: J. McClain

To close BZA President nominations.

2nd by: K. Tyler

All in favor, motion carried.

Roll call

W. Grabowski: Approve

C. Fleeman: Approve

K. Tyler: Approve

S. Lazur: Approve

J. McClain: Approve

Jim McClain – President of BZA

Vice President nominations

J. McClain nominates K. Tyler

2nd by: C. Fleeman

Motion to close BZA Vice President nomination.

Motion by: W. Grabowski

To close BZA Vice President nominations.

2nd by: S. Lazur

Roll call

W. Grabowski: Approve

C. Fleeman: Approve

S. Lazur: Approve

J. McClain: Approve

K. Tyler: Abstain

Kit Tyler – Vice President of BZA

K. Tyler thanks everyone for their time and patience.

Chairman J. McClain: Are we going to do new business?

K. Tyler: The new business was to approve the minutes and elect officers. Other new business?

Chairman J. McClain: I have grave concern about the atmosphere on the way this hearing was held. A cloud of misrepresentation was created by the Schenkel's through a series of emails and bulletin board posts starting at least on January 21st, which grossly misrepresented the variance request of Mr. Walter. Even more grievance than that was the fact that George Schenkel, a sitting Plan Commission board member and a town council member, encouraged individual Clear Lake residents to contact you and me directly. That is a clear violation of the Plan Commission rules, ex-parte communication, no person may communicate with any member of the board of zoning appeals before the hearing with the intent to influence the members action on a matter pending before the board.

Chairman J. McClain to board members: Did you receive, on January 21st, an email from Kathleen Schenkel expressing disagreement with the variance request and asking you to vote no?

Board Member: I don't think it was asking to vote no. I did not reply to it.

Chairman J. McClain: I believe none of you had anything to do with it, but it was an attempt to influence this board. Can the public make a comment?

Attorney M. Hawk: Actually, Jim McClain is the chairman now.

Chairman J. McClain: Can I open for public comment?

Attorney M. Hawk: Yes, you are the chairman.

Chairman J. McClain: Opened for public comment.

George Schenkel: We did send out an email and it did.....

Chairman J. McClain to George Schenkel: You did not send out an email, Kathleen sent out an email.

George Schenkel: Kathleen sent out the emails. But if you look at ex-parte, how many sentences is ex-parte? I will tell you; it is one sentence. How many pages are in that? 14. One sentence out of 14. I have been on the Plan Commission for one month at that time.

Chairman J. McClain: You have been on the Plan Commission numerous times.

George Schenkel: I have been on the Plan Commission one time this year. I was just recently appointed to the Plan Commission; it has been years since I have been on it. Ex-parte is one sentence in 14 pages. My wife goes to the Clear Lake town bulletin board and if you go to the BZA, your names and your emails are there. Why wouldn't you use them if they are on the Town of Clear Lake's board.

Chairman J. McClain: No person may communicate with any member of the board of zoning appeals before the hearing with the intent to influence the members action on a matter pending before the board.

George Schenkel: For a citizen to read 14 pages and to snag out one legal term, when the Town of Clear Lake has emails listed of every BZA member on their bulletin board. As soon as it was identified by the town, she immediately had it removed from the bulletin board. Tell me did each of you receive a personal apology from my wife?

Chairman J. McClain: She did that, thank you very much.

George Schenkel: What else were we supposed to do?

Chairman J. McClain: The next day it was posted on the Next-door bulletin board with the emails removed.

George Schenkel: It was identified to us. I will go through the timeline with you, from when it went out, the next day it was identified to us, that afternoon it was retracted from the bulletin board and that same day, she wrote each of you an apology.

Chairman J. McClain: Was there an attempt to influence the members of this board?

Kathleen Schenkel: No, I wanted to make my feelings known and send it out.

Chairman J. McClain to George Schenkel: Was an email under your name sent out on the 21st to individual residents of Clear Lake?

George Schenkel: There were several family members I sent an email to.

Chairman J. McClain: In that email you suggested to them that they contact the members....
George Schenkel: Yes, I did.

Chairman J. McClain: End of conversation sir.

K. Tyler interrupts: I am entertaining a motion to adjourn this meeting, which takes precedence over anything else.

All In favor.

K. Tyler: Motion to adjourn, but I need a second.

No second.

J. McClain: I believe there was an atmosphere that made it very difficult for this board to do other than what they did this evening. I think it is very unfortunate. I believe there has been misconduct of a significant nature by a member of the Town of Clear Lake board and a member of the Plan Commission, by a gentleman who has years of board and Plan Commission experience.

Chairman J. McClain: 2nds motion to adjourn.
All in favor, motion carried.

Meeting adjourned.



Board of Zoning Appeals Chairman: Jim McClain

Date: 04/19/2022



Attest: Larry Lillmars, Zoning Administrator

Date: 04/19/2022