

## Town of Clear Lake-Board of Zoning Appeals Meeting Minutes-October 11, 2021

Board of Zoning Appeals Meeting Minutes-Monday, October 11, 2021

Call to order at 7:00 PM by Chairman Kit Tyler.

Introduction of members and others in attendance:

Walter (Mokey) Grabowski, 254 West Clear Lake Drive

Burton (Jim) McClain, 1226 Quiet Harbor

Kit Tyler, 280 Penner Drive

Cecil Fleeman, 240 Penner Drive

Chairman Tyler confirmed that we have a quorum.

Also in attendance: Brenda Eby, Town Clerk, Larry Lillmars, Zoning Administrator and eight audience members. (see attached) Six audience members signed up to speak. (see attached)

Chairman K. Tyler read the introductory comments.

There are two variances before the Board tonight.

### **Variance Hearing Case 2021-06: Pat Kroger, Anne Shock and Mary Helldoerfer**

Request for variance from development standards for Pat Kroger, Anne Shock and Mary Helldoerfer, 120 Lakeside Court, Fremont, IN 46737. They request a (3) foot relief from *UDO Article 2.14 Section 5.63 (A) (2) General setback standards Minimum side yard setback*. The proposed project includes building a new pergola that encroaches the side yard setback.

Pat Kroger, of Germantown, OH, who is a part owner of 120 Lakeside Court, explained that over the past year and a half, the neighbor had taken down some trees that were in distress. This caused a major lack of shade on the lake side of his home, making the far back patio pretty much uninhabitable during the afternoon hours. They want to put up a pergola that will provide shade on the deck.

This lot is triangle shaped, which limits where they can put a pergola. By putting it on the deck, the roof line would extend to within two feet from the property line between them and the common area for Arcadia Beach. The rule is five feet from the property line.

After some discussion by the Board, Chairman K. Tyler entertained a motion to suspend the Hearing and open for public comment.

**Motion by:** Cecil Fleeman

To suspend the Hearing and open the meeting for public comment.

**2<sup>nd</sup> by:** Jim McClain

All in favor, motion passed.

Chairman K. Tyler read a form letter that the Kroger/Helldoerfer/Shock families passed around to their neighbors, explaining their plans and asking for signatures in support. She read through the signatures that were in support of the project: Tyson Johnston, Michael & Carol Frederick, Phil Bellner, Dan & Christine Rippe, George Phillips, Mary McCue, Nicholas & Emily Nemire, Jack & Penny Hallock, basically everyone in the neighborhood.

Phil Bellner, 119 Lakeside Court, commented that the only traffic on the road next to the proposed pergola, which he said is basically just a path, is foot traffic, people walking.

With no other questions/comments from the public, Chairman K. Tyler entertained a motion to close the public portion of the meeting and reopen the Hearing.

**Motion by:** Jim McClain

To close the public portion and reopen the Hearing.

**2<sup>nd</sup> by:** Cecil Fleeman

All in favor, motion carried.

With no further questions/comments from the Board, we will move on to Findings of Facts.

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. YES

**Motion by:** Cecil Fleeman

To accept Findings of Fact #1

**2<sup>nd</sup> by:** Mokey Grabowski

All in favor, motion carried.

Findings of Fact #2:

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

**Motion by:** Mokie Grabowski

To accept Findings of Fact #2

**2<sup>nd</sup> by:** Cecil Fleeman

All in favor, motion carried.

Findings of Fact #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. YES

**Motion by:** Jim McClain

To accept Findings of Fact #3

**2<sup>nd</sup> by:** Cecil Fleeman

All in favor, motion carried.

Findings of Fact #4:

The strict application of the terms of the zoning ordinance **will** result in practical difficulties in the use of property. YES

**Motion by:** Kit Tyler

To accept Findings of Fact #4

**2<sup>nd</sup> by:** Mokey Grabowski

All in favor, motion carries.

Roll call vote for Decision of Variance #2021-06:

Vote: Kit Tyler (Approve), Cecil Fleeman (Approve), Mokey Grabowski (Approve) and Jim McClain (Approve)

Case #2021-06: Approved by BZA

Certification of Decision shall be created and recorded with the Steuben County Recorder.

**Variance Hearing Case 2021-07: Ron and Julie Burk**

Request for variance from development standards for Ron and Julie Burk, 956 South Clear Lake Drive, Fremont, IN 46737. They request a (2) foot height relief from *UDO 5.26 Residential Fence Standards, Section 5.26 (D)(1) Height*. The project is the construction of a new fence that is 6 feet in height that exceeds the (4) feet maximum height requirement.

Larry Lillmars, Clear Lake Zoning Administrator, explained to the Board that the fence is already up and the property owners never applied for an ILP. Had they followed the proper procedure for a new fence, they would have known about the 4' maximum height requirement. If the variance request is approved, the Burks will proceed with obtaining an ILP.

Chairman K. Tyler stated that the case will be handled as if the fence is not already standing. This case will be held to the same standards as if the Burks were requesting a variance before the fence was put up.

Alex Miller with StarHOMES spoke on behalf of the property owners. StarHOMES did not construct the fence but are familiar with the UDO and the variance procedure at Clear Lake, so were asked by the Burks to represent them at this hearing. Due to the rolling landscape at this location, the property beside the fence is almost as tall as the fence and the only building is a storage unit so no one's view is being blocked.

Chairman K. Tyler read letters from:

Byron Stephens, 960 South Clear Lake Drive, in support of the Burks

Molly Wehrenberg Weber, 822 South Clear Lake Drive, in support of the Burks. Brian Weber was in the audience and spoke in support of the fence.

The Board discussed why there would be a need of privacy around the garage and why the Burks did not know that the fence would require an ILP. StarHOMES recently built the garage for the Burks but the company that constructed the fence said that they did not know that they needed a permit to put up a fence.

It was stated that either the landowner or the fence company should have known to check with the Town to make sure that they were following all rules and regulations.

Chairman K. Tyler entertained a motion to suspend the hearing and open the meeting for public comment.

**Motion by:** Cecil Fleeman to suspend the hearing and open for public comment.

**2<sup>nd</sup> by:** Jim McClain

All in favor, motion carried.

Don Luepke, 1057 South Clear Lake Drive, feels that this fence should have been noticed before it was fully constructed. If it had been, the owners would have been informed of the rules and regulations in time to follow the proper procedure. He reminded everyone that the reason for the 4' fence rule is so that neighbors can be neighborly and converse over the fence.

John Wilhelm, 206 West Clear Lake Drive, is against this proposal. The Town has rules for everything and the owners of this property should have known that they needed to check with the Town on fence regulations. He stated that this variance request will not pass the findings of facts. His suggestion, based on principle, is that the Board deny this variance and turn it over to the Zoning Administrator to oversee the reduction or the elimination of this fence, plus daily oversight of any new or substituted form.

Chairman K. Tyler read an email sent from the Zoning Administrator to Gregg Richhart of StarHOMES. Again, StarHOMES has been involved because they are familiar with the UDO and because Mr. Burk works for them, so they are representing the Burks. The email was to inform the Burks that the fence was in violation of the UDO height regulations and to inform them that the Zoning Administrator's office would like to go forward with submitting an ILP and a variance request and to let the Burks know of the cost and the details of the next BZA meeting. (A copy of the email is attached)

With no other questions or comments from the public, Chairman K. Tyler entertained a motion to close the public portion and reopen the hearing.

**Motion by:** Jim McClain

To close the public portion of the meeting and reopen the hearing.

**2<sup>nd</sup> by:** Cecil Fleeman

All in favor, motion carried.

Chairman K. Tyler spoke against the variance because Clear Lake does not have 6' fences for a reason, to be neighborly. Also, we have a UDO for a reason, a set of rules/regulations for everyone to follow.

Board member, Jim McClain, stated that he would have very much liked to hear from the homeowner at 105 Elm Street, as she is the only home whose view may be affected by this fence. Had they followed proper protocol, this would be an area that he would not be opposed to a 6' fence because it only affects a group of garages other than the home at 105 Elm Street, plus it is a very nice fence. He was unhappy that the owners were not at the hearing to speak for themselves.

Board member, Cecil Fleeman, asked how it was discovered that a fence had been constructed without a permit. Bonnie Brown stated that the Street/Utility Superintendent noticed it on his rounds and notified her.

With no further discussion amongst the Board, we will proceed to the Findings of Facts.

Review of 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. YES

To accept Findings of Fact #1, legal notice was published in the Herald Republican and the surrounding landowners received mailings, certified to the six adjacent landowners and 17 by regular mail. Board member, Jim McClain, questioned whether the only homeowner affected, Jill Nichols, had been notified. Z.A. Lillmars answered, yes, by certified mail and we did receive the card back to confirm that she had picked it up.

**Motion by:** Mokie Grabowski

To accept Findings of Fact #1

**2<sup>nd</sup> by:** Cecil Fleeman

All in favor, motion carried.

Review of Findings of Fact #2:

The approval of the variance **will not** be injurious to the public health, safety, morals and general welfare of the community. NO

**Motion by:** Cecil Fleeman

To deny Findings of Fact #2

**2<sup>nd</sup> by:** Mokie Grabowski

Three in favor, one opposed, motion to deny carried.

Review of Findings of Fact #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. NO

**Motion by:** Cecil Fleeman

To deny Findings of Fact #3

**2<sup>nd</sup> by:** Kit Tyler

Three in favor, one opposed, motion to deny carried.

Review of Findings of Fact #4:

The strict application of the terms of the zoning ordinance **will** result in practical difficulties in the use of property. NO

**Motion by:** Jim McClain

To deny Findings of Fact #4

**2<sup>nd</sup> by:** Cecil Fleeman

All in favor, motion to deny carried.

Roll call vote for Decision of Variance #2021-07:

Vote: Kit Tyler (Deny), Cecil Fleeman (Deny), Walter Grabowski (Deny), and Jim McClain (Deny)

Case #2019-07-Denied by BZA

Chairman K. Tyler stated that there are several sets of minutes needing approval. Some of these minutes are from 2019 that were never approved. It was determined that two current BZA were on the Board at the time of these meetings so with their OK, the new members can vote to approve, even though they were not on the Board at the time of the meetings.

**Motion by:** Cecil Fleeman

To approve the April 15, 2019, minutes, as submitted.

**2<sup>nd</sup> by:** Kit Tyler

All in favor, motion carried.

**Motion by:** Kit Tyler

To approve the June 26, 2019, minutes, as submitted.

**2<sup>nd</sup> by:** Cecil Fleeman

All in favor, motion carried.

**Motion by:** Kit Tyler

To approve the October 21, 2019, minutes, as submitted.

**2<sup>nd</sup> by:** Cecil Fleeman, with one change on page six, change Attorney Mike Long to Attorney Mike Hawk.

All in favor, motion carried to approve with corrections.

**Motion by:** Mokie Grabowski

To approve the August 9, 2021, minutes, as submitted.

**2<sup>nd</sup> by:** Cecil Fleeman

All in favor, motion carried.

Chairman K. Tyler stated that there has been a suggestion of moving the meetings to the third Tuesday of each month due to Holidays falling on Mondays. Discussion followed. The Town Council will make the final decision.

Chairman K. Tyler entertained a motion to adjourn.

**Motion by:** Cecil Fleeman

To adjourn the meeting.

**2<sup>nd</sup> by:** Mokie Grabowski

All in favor, motion carried. Meeting adjourned at 8:00 PM.

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Board of Zoning Appeals Chairman: Kit Tyler

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Attest: Brenda Eby, Town Clerk