

Town of Clear Lake - Board of Zoning Appeals
Meeting Minutes – October 17, 2016

Chairman Bonnie Brown opened the October 17, 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
Cecil Fleeman
Don Luepke
Bruce Moody, Alternate for Tom Schmidt

Also present:

Michael Hawk, Attorney for the Board of Zoning Appeals
Kenneth J. Hughes, Zoning Administrator

Chairman Brown determined a quorum was present and read aloud the Board of Zoning Appeals' Duties and Procedures.

Variance 2016-08 – Momper at 178 West Clear Lake Drive

Chairman Brown stated the Board would hear Case #2016-08, a Variance from Development Standards filed by Lisa and Matt Momper at 178 West Clear Lake Drive. Mr. and Mrs. Momper would like to install a generator in his side yard setback.

Mr. Matt Momper made the presentation to the Board.

He stated that they would like to install a back up generator on the side of the property near the existing electrical meter, air conditioner unit, and water lines. He believes the generator location will make sense.

Mr. Moody asked who will be installing the generator. Mr. Momper indicated that Fort Wayne Generators would be installing the generator.

Mr. Luepke asked who owned the sidewalk on the opposite of the property. Mr. Momper indicated that it is shared ownership. He then said that there is arborvitae that blocks the side on which they would like to install the generator.

Mr. Luepke then asked how Mr. Momper proceeded with the project. Mr. Momper said that Fort Wayne Generator pulled the permit. Mr. Luepke then spoke about the difference between approving variances and asking for forgiveness.

There was then discussion about the process for the generator. Mr. Hughes indicated that it was Mr. Folland who told the Mompers that they needed a variance and permit.

Mr. Fleeman then asked if the generator could be located somewhere else on the side of the property. Mr. Momper said he was unsure if it could be moved on the other side of the air conditioner.

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

Public Hearing

Chairman Brown asked for public comment.

Bob Lewis, owner of 362 East Clear Lake Drive, spoke. He said he is in support of the project.

The following correspondence was received:

“My home is next to the area where they wish to place the generator and I ask the board to grant their variance request. Thank you. Cheryl Johnson” (*Owner of 180 West Clear Lake Drive, sharing a bordering side property line with the Mompers at the proposed location of the generator.*)

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

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 October 5, 2016.*
- b. Notice has been made to appropriate land owners as shown by the stamped certificates of mailing.*

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.*

Mr. Fleeman 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. Luepke moved to approve the variance application 2016-08. The motion was seconded by Mr. Moody. The motion was approved by all members.

Variance 2016-08 for Lisa and Matt Momper is hereby approved.

Variance 2016-09 – Gleave at 693 South Clear Lake Drive

Chairman Brown stated the Board would hear Case #2016-09, a Variance from Development Standards filed by Seth and Amanda Gleave at 693 South Clear Lake Drive. Mr. and Mrs. Gleave would like to install a shed in their side yard setback.

Mr. Seth Gleave made the presentation to the Board. Mr. Gleave said that the old shed's roof caved in. He ordered a new shed and had it painted to match the house. He stated that the location of the shed is exactly where the old one was and that point is the lowest point on the ground. He said that the shed will cover the lowest point of the ground.

Mr. Luepke asked about the process that took place. Mr. Gleave said that he had looked at the town's ordinances and did not find the setback standards. He apologized for not getting the proper permit and following the ordinance.

Mr. Luepke asked about the grinder pump. Mr. Gleave indicated that it is five feet away from the grinder pump and that Mr. Bob Hull, Superintendent, had given the okay for the placement.

Chairman Brown asked why Mr. Gleave did not contact the town. Mr. Gleave indicated that he was in a rush to get his belongings in a proper storage location.

Mr. Moody indicated that he has a problem with the placement on the property line. He said he might be willing to give the variance if there were not another location to shed, but since there is one, it should be placed within the proper setbacks.

Chairman Brown then discussed the property lines in question.

Mr. Hughes indicated that there is the possibility of adding a condition for an administrative subdivision be completed.

Mr. Luepke asked Mr. Hughes about the requirements for an ILP. Mr. Hughes indicated that anything under 120 square feet does not require an ILP.

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

Public Hearing

Chairman Brown asked for public comment.

Mr. Ken Wertz, 280 Outer Drive, spoke before the board. Mr. Wertz indicated that the new shed location looks exactly the same to him. Mr. Wertz then discussed how he would look at project. Mr. Wertz then discussed the requirement for Mr. Gleave to move the shed and he did not believe it to be right to require Mr. Gleave to move the shed. Mr. Wertz then spoke on what he believed to be the BZA duty.

Chairman Brown then informed Mr. Wertz that the UDO requires the movement of the shed in order to accept a variance application. Mr. Wertz then presented a plat of the land in question.

Ms. Emma Brown stated that she does not like people building on the property line.

The following correspondence was received:

“Dear Mr. Hughes:

I write to you today regarding the Variance requested file number 2016-09. We own the cottage at 266 Outer Drive in Clear Lake. We have owned the property since 2011 and my wife’s parents, Mike and Kathy Rickenberg, owned it from 1988 until 2011. As you can see the Town of Clear Lake has been part of my family for 28 years and my family enjoys spending summers there each year. My father in law was there for a visit this week to close our cottage for the winter. Our concern is that we do not want any structures placed on the ingress egress easements to our property. It is our understanding that if the variance is approved it would obstruct that easement and we oppose any obstruction or structures placed on any easement to our property. Please let me know that you received this email.

Thank you, Robert Guy”

“Town of Clear Lake,

It has come to our knowledge that Seth and Mandy Gleave had filed for a variance to put a new shed on the property line of the east end of their property and in the same exact spot where the old dilapidated metal shed was.

The lots that the Gleave's own have bad drainage, which holds water and floods each spring and fall during the rainy seasons, so the placement of the new shed is in the best spot given the drainage issues.

The new shed looks very nice compared to the old shed and it matches the cottage. Everything the Gleave's have done to their property has improved their property and looks very nice.

We are in favor of the Gleave's getting approval for the variance.

Thank you,
Brenda Stephens 688 (*South Clear Lake Drive*)
Dave and Rachel Gerken 702 (*South Clear Lake Drive*)
Alex and Susan Connett 700 (*South Clear Lake Drive*)
Daniel R McArdle (*686 South Clear Lake Drive*)”

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

Chairman Brown stated that she thought the shed was very nice looking. She then discussed the property line and easement located next to the property.

Mr. Moody stated that if there had been enough homework done that we would not need a variance if the shed was placed differently.

Mr. Luepke then asked Mr. Hughes about the different setbacks required in the UDO.

Mr. Moody then asked about the changes an administrative subdivision would require. It was indicated that it would be possible to meet all setback standards in that case.

Mr. Luepke asked if it would be possible to apply the LR standards to lot instead of the SR standard. Chairman Brown indicated that she could live with that.

Mr. Luepke moved to require an administrative subdivision. Mr. Moody seconded the motion. The motion carried with all members in favor, none opposing.

Mr. Moody moved to allow a five foot setback on the side yard. Mr. Luepke 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

- c. Legal notice of the application was published in the Herald Republican Newspaper on October 5, 2016.*
- d. Notice has been made to appropriate land owners as shown by the stamped certificates of mailing.*

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

Mr. Fleeman 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 installed shed will not impact the use of neighboring properties or easements. It will not impact drainage, views, or traffic circulation.*

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

Mr. Fleeman 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. *Some of the other land owned by the property owners is unsuitable for building because of flooding hazards and standing water.*

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

Mr. Moody moved to approve the variance application 2016-09 with the adopted conditions. The motion was seconded by Mr. Luepke. The motion was approved by all members.

Variance 2016-09 for Seth and Amanda Gleave is hereby approved with the adopted conditions.

Variance 2016-10 – Wenger at 210 West Clear Lake Drive

Chairman Brown stated the Board would hear Case #2016-10, a Variance from Development Standards filed by Klaus Wenger at 210 West Clear Lake Drive. Mr. Wenger would like to build a new single-family dwelling in the street yard setback.

Mr. Gregg Richhart of Star Homes made the presentation to the Board. *(Mr. Richhart was duly authorized to represent Mr. Wenger's petition per a letter received and on file.)*

Mr. Richhart said that Wengers would like to build a new house but an easement prevents them from using the setbacks that would normally be applied if the Wengers owned the easement. He said that the house could be built within the proper setback but they would have to remove two

mature trees. He stated that they would like to have move lake yard and to save the two mature trees.

Mr. Luepke asked about the setback distance that had been shown. Mr. Luepke then discussed the staking that had been done by the builder.

Mr. Fleeman asked about the grinder pump. Mr. Richhart stated that it would be moved and he has discussed the project with Mr. Hull.

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

Public Hearing

Chairman Brown asked for public comment.

Mr. Bob Lewis spoke before the board. He said that he would do anything in his power to save those trees.

Mr. John Wilhelm spoke before the board. He also values the trees. He urges approval.

Ms. Emma Brown said she would like to support the variance.

The following correspondence was received:

“Dear Mr. Hughes:

My wife (Sue Dickes) and I received the notice regarding a request for variance for Wenger’s property located at 210 West Clear Lake Drive. As adjacent property owners we have no objection to the Wenger’s request for a variance on the set back requirements from our property line. For your information, we have given the Wengers an easement right over our property (which lies between the street and their property line). It is unclear to me why a variance is needed since the Wenger’s property line varies from having property contiguous to the street to several feet from the street (where our property lies between the street and the Wenger’s property line on the northern portion of their lot).

In sum, we hope the zoning board will approve the variance request.

Cordially,
Byram Dickes”

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

Mr. Moody indicated that this is a “slam dunk.”

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

- e. *Legal notice of the application was published in the Herald Republican Newspaper on October 5, 2016.*
- f. *Notice has been made to appropriate land owners as shown by the stamped certificates of mailing.*

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

Mr. Fleeman 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 project will not be substantially different than other home's distances to the road.*
- b. *The proposed project preserves mature trees that are important to the ecological health of the community.*

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 property that is being encroached upon is unbuildable under the current UDO standards.*
- b. *The use of the property is consistent with the type and intensity of neighboring properties.*

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

Chairman Brown offered a condition to the approval: "Construction Parking Standards." Four (4) off- street parking spaces for construction vehicle parking shall be identified prior to an Improvement Location Permit being issued. Construction parking shall not be located on the street, but may be located on adjacent properties with permission from the property owner. Contractors shall be required to keep the street free of construction vehicles, mud, dirt, and other debris for the duration of the project.

Mr. Moody seconded the motion. The motion carried with all members in favor, 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. *The unusual layout of the property lines and the location of the road right of way make it difficult to fit a house that is comparable in size within the required setbacks without removing mature trees that are beneficial to the community.*

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

Mr. Moody moved to approve the variance application 2016-10 with the adopted conditions. The motion was seconded by Mr. Luepke. The motion was approved by all members.

Variance 2016-10 for Klaus Wenger is hereby approved with conditions.

The Board then took an informal five-minute recess.

Old Business

Moving on to Old Business, Chairman Brown asked the board members if they had reviewed the minutes from the June 20, 2016 meeting. Mr. Luepke made a motion to accept the minutes as presented. Mr. Moody seconded the motion. Motion carried with three members in favor, Mr. Fleeman abstaining.

Chairman Brown then asked the board members if they had reviewed the minutes from the August 15, 2016 meeting. Mr. Luepke made a motion to accept the minutes as presented. Mr. Moody seconded the motion. Motion carried with all members in support, none opposing.

Chairman Brown asked for any other Old Business.

Chairman Brown then discussed the staking of property corners and building corners. She would like them to be at least two-foot tall.

There was then discussion about the possibility of ordering stakes and providing them through the town with variance applications. It is suggested to have two colors, one for property lines and one for building corners.

Hearing none, Chairman Brown asked for any new business.

Mr. Hughes informed the board that since former Secretary Schweitzer had resigned and moved onto another position, it was necessary to elect a new secretary for the Board of Zoning Appeals. Mr. Luepke moved to appoint Mr. Hughes as secretary to the Board of Zoning Appeals. Mr. Moody seconded the motion. The motion carried with all members in favor, none opposing.

Hearing no other business, Chairman Brown adjourned the meeting. Meeting adjourned at approximately 8:35 PM.

Respectfully Submitted:

Kenneth J. Hughes, Secretary