

**Town of Clear Lake - Board of Zoning Appeals
Meeting Minutes – October 20, 2014**

Chairman Bonnie Brown opened the October 20, 2014 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
Roger Dammeier, Vice Chairman
Ron Walters
Ken Wertz

BZA member John Wilhelm was not present.

Also present:

Amy Schweitzer, Zoning Administrator and Recorder of the minutes of the meeting
Michael Hawk, Town Attorney

Chairman Brown determined a quorum was present. Ms. Brown read the Board's introduction that identifies membership requirements and primary duties of the Board of Zoning Appeals before announcing the Board would be hearing *Case #2014-02, filed by Tom and Nancy Schmidt, 254 West Clear Lake Drive, a Development Standards Variance* requesting relief from *Section 2.14 Minimum Street Yard Setback, Section 2.14 Minimum Lake Yard Setback, and Section 5.22D Environmental Protective Feature Setback.*

Mr. Tom Schmidt of 254 West Clear Lake Drive introduced himself and his wife, Nancy. Mr. Schmidt thanked the Board for the opportunity to present his project. He began by stating his property was unusual compared to other Clear Lake properties and explaining his property has 125 foot of lake frontage, but is very shallow. The property is only 67-feet deep on one end and about 115 feet deep on the other side. Mr. Schmidt told the Board that they were asking to constructed a new garage that would be 22-feet off the street instead of the required 25 feet. Because of the angle of the lot, the southwest corner of the proposed garage will also be 27-feet from the lake, as opposed to the required 30-feet.

Mr. Schmidt noted that the adjacent house (McArdle) is about 19-feet from the street, but their garage is 22-feet from the street. Schmidt's proposed garage is sited in line with the existing McArdle garage. Schmidt stated the McArdle house is about 14-feet closer to Clear Lake than their proposed garage. Schmidt stated there were no structures on the property to the east of theirs.

Mr. Schmidt told the Board that they purchased the property in 1996, and when they decided to build a new home in 1999 there was a raised septic mound on the property. The new house was built on the east end of the property because it had the most depth, and Schmidt thought maybe one day a garage could go where the raised septic mound was. Schmidt told the Board that the existing mini-barn is all the storage they have available to them.

Schmidt also provided an additional rendering of the proposed garage that did not have a roof dormer on it. He explained several pictures of his lot that were in the information he filed with the Variance Application adding that in August the corner of the proposed garage was actually 34 feet from the edge of the water (as opposed to the 27-feet shown on the survey). Mr. Schmidt stated that the end of the house was not well-laid out to have a garage attached to it. The angle and elevation necessitate some sort of a connector, and the proposal before the Board today was the best arrangement the builder could come up with. He stated the garage would be three steps lower than the house, and those steps would be within the

garage as a landing. Mr. Schmidt stated that he and his wife lose a lot of their view of Clear Lake, particularly off of their existing screened-in porch. Schmidt stated the renderings were from Lynn Delagrang who built the house and illustrate that the proposed garage will be consistent in character with the house. It would have hardi-plank siding, composite trim, and the garage door would be something appropriate – even if it is a little different than what is shown in the renderings.

Mr. Schmidt told the Board he had contacted NIPSCO about the existing power pole but had gotten no response from them. He stated the structure will be about 10 feet from the pole. Schmidt also added that the service to the house, which is currently above ground, will be buried as part of this project.

In conclusion, Mr. Schmidt stated he and his wife were officially fulltime residents as their house in Fort Wayne has sold. He stated they both still go to work every day and last winter he literally took his life in his own hands trying to get out to his car. He stated it was imperative for them to have a garage in order to make their current property a suitable fulltime residence. Mr. Schmidt added that the convenience of a simple garage is a reasonable expectation in this day and age.

Chairman Brown asked for questions from the Board. Mr. Walters asked about the square footage of the proposed garage. The proposed garage will be 26-feet by 24-feet for 624 square feet. Walters also asked about the NIPSCO power pole. Board members commented that it was not a Town issue, but usually between the private property owner and the utility company.

Chairman Brown asked if the existing shed would remain. Schmidt stated that he hadn't planned to remove it immediately, but he would like to move it in the long term. He told the Board that the garage was for the cars, and lake gear would continue to be stored in the shed. Ms. Brown asked about the existing stone driveway. Schmidt stated the stone driveway would be removed when the shed is moved, and their intent would be to put grass there. Brown asked about trees. Mr. Schmidt responded that two large trees would come down for this project, but they were planning to preserve all of the other trees on the lot. Brown asked about their planting requirements, and Staff Schweitzer stated that with the preservation of so many of the existing trees, there would not be any additional tree plantings required as part of this project. Lastly, Chairman Brown asked why the dormer was eliminated. Mr. Schmidt stated that they really didn't like the look of it, and it added cost without function.

Hearing no additional questions from the Board, Chairman Brown entertained a motion to open the Public Hearing. Mr. Dammeier made a motion to close the regular meeting of the Board of Zoning Appeals and open the Public Hearing. Mr. Wertz seconded the motion. Motion carried with all in favor. Mrs. Kris Gartner of 253 West Clear Lake Drive introduced herself and asked about the utilities leading to the pole and about burying those utilities. Mr. Dammeier stated that it would be up to NIPSCO, but burying that short section would be a very expensive proposition. Dammeier asked about a utility easement. It was noted that no utility easements are shown on the survey for the property. Gartner stated their utilities are buried and expressed concern for the pole being moved to her side of the street. Mr. Rick Gartner, 253 West Clear Lake Drive, introduced himself and asked if there was also a street light attached to that pole. Schmidt confirmed there was a street light attached to the pole.

With no additional comments from the public, Staff Schweitzer read aloud three emails from neighbors.

- Shawn and Linda McArdle, 250 West Clear Lake Drive and immediately west of the Schmidt's, have no objection to the project and support it.
- Jeffrey and Molly Nagle, 150 Lakeview Drive, have no objection to the project and support it.
- Bill and Amy Zeller, 248 West Clear Lake Drive, have no problems or concerns with the requested variances.

Mr. Dammeier made a motion to close the public hearing. Mr. Walters seconded the motion. Motion carried with all in favor.

Chairman Brown asked if the street side setback variance was a public safety issue, with the proposed garage being so close to the road and the road already so narrow. She expressed an interest in making the driveway a little longer for parking vehicles. Brown mentioned moving the garage closer to the lake by one foot and taking a foot off the depth of the building.

There was some discussion about the size of vehicles. Staff Schweitzer commented that a parking space is required to be 18-feet long and 9-feet wide. Chairman Brown also said she would like the shed removed when the garage is constructed. There was discussion about the garage adding vehicular storage and attic storage, but the attic storage does not help with lake toys and gear during lake season. Mr. Wertz stated the Schmidts were trying to set the site up the best they could.

Staff Schweitzer told the Board that the layout of the Schmidt's lot was a disadvantage. Given the current layout, the Schmidt's building envelope is approximately 30 feet deep and 100 feet wide, for a total of 3,000 square feet. If the Schmidt's lot were the exact same size, but turned so the largest side was the depth, the building envelope would be 70 feet by 68 feet, for a total of 4,760 square feet, more than 50% larger.

Chairman Brown conducted a trial vote before moving on to the Findings of Fact Worksheet. She told Mr. and Mrs. Schmidt that the Board was required to make Findings of Fact for each of the two variances. Mr. Schmidt questioned the code number listed on the Findings of Fact Worksheet, *Section 5.21 D. Environmental Protective Feature Setback*. Schweitzer stated that the Unified Development Ordinance was recently amended and the number on the worksheet was the number prior to that amendment – and the number listed in the BZA members' older printed copies of the Unified Development Ordinance. *Section 5.22 D. Environmental Protective Feature Setback* is the updated section number and in the published version of the Unified Development Ordinance on the Town's Website.

Chairman Brown proceeded with the Findings of Fact for Variance A of *Case #2014-02, An Application for a Development Standards Variance*, filed by Tom and Nancy Schmidt. Variance A is for relief from Section 2.14 Minimum Street Yard Setback.

Finding A1: *Legal notice of the petition has been provided in accordance with Indiana Code and Notice has been made to appropriate land owner because (a) Legal notice of the application was published in the Herald Republican Newspaper on October 8, 2014; 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. Dammeier made a motion to accept Finding A1 as presented. Mr. Walters seconded the motion. Motion carried with each of the four Board Members voting in favor of the motion via a roll call vote.

Finding A2: *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 garage does not block visibility of oncoming traffic; (b) The proposed garage will be set further off the street than the adjacent homes; and (c) The proposed street side setback allows sufficient area for a vehicle to be in the driveway without the vehicle being in the traveled roadway.*

Mr. Dammeier made a motion to accept Finding A2 as presented. Mr. Walters seconded the motion. Motion carried with each of the four Board Members voting in favor of the motion via a roll call vote.

Finding A3: *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; and (b) The proposed garage will be constructed with exterior finishes that complement the existing home.

Mr. Wertz made a motion to accept Finding A3 as presented. Mr. Dammeier seconded the motion. Motion carried with each of the four Board Members voting in favor of the motion via a roll call vote.

Finding A4: *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because (a) The configuration of the lot is the practical difficulty because the lot is substantially wider than it is deep. Despite this being a very large lot, the shallow depth does not permit even a minimum-size two car garage without setback variances.*

Mr. Dammeier made a motion to accept Finding A4 as presented. Mr. Walters seconded the motion. Motion carried with each of the four Board Members voting in favor of the motion via a roll call vote. Mr. Dammeier made a motion to approve Variance A as requested. Mr. Wertz seconded the motion. Motion carried with each of the four Board Members voting in favor of the motion via a roll call vote.

Chairman Brown stated that the Board would make Findings of Fact for Variance B of *Case #2014-02, An Application for a Development Standards Variance*, filed by Tom and Nancy Schmidt. Variance B is for relief from Section 2.14 Minimum Lake Yard Setback and Section 5.22 D. (formerly Section 5.21 D.) Environmental Protective Feature Setback.

Finding B1: *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 8, 2014; 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. Dammeier made a motion to accept Finding B1 as presented. Mr. Wertz seconded the motion. Motion carried with each of the four Board Members voting in favor of the motion via a roll call vote.

Finding B2: *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 garage does not come any closer to the lake than existing adjacent structures; and (b) the proposed garage project maintains the majority of the trees on this lot and will be substantially under the maximum lot coverage permitted leaving plenty of grass area for water filtration before it enters the lake.*

Mr. Dammeier made a motion to accept Finding B2 as presented. Mr. Walters seconded the motion. Motion carried with each of the four Board Members voting in favor of the motion via a roll call vote.

Finding B3: *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; and (b) The proposed garage will be constructed with exterior finishes that complement the existing home.*

Mr. Dammeier made a motion to accept Finding B3 as presented. Mr. Walters seconded the motion. Motion carried with each of the four Board Members voting in favor of the motion via a roll call vote.

Finding B4: *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because (a) The configuration of the lot is the practical difficulty because the lot is substantially wider than it is deep. Despite this being a very large lot, the shallow depth does not permit even a minimum-size two car garage without setback variances.*

Mr. Dammeier made a motion to accept Finding B4 as presented. Mr. Walters seconded the motion. Motion carried with each of the four Board Members voting in favor of the motion via a roll call vote. Mr. Dammeier made a motion to approve Variance B as requested. Mr. Walters seconded the motion. Motion carried with each of the four Board Members voting in favor of the motion via a roll call vote.

Chairman Brown told the Schmidt's that their variances had been approved as requested. Mr. Schmidt thanked the Board for their time.

Chairman Brown asked the Board to review the Meeting Minutes from June 16, 2014. Mr. Dammeier made a motion to approve the minutes as presented. Mr. Wertz seconded the motion. Motion carried with all in favor.

Under New Business, Chairman Brown asked Staff Schweitzer a question regarding item #5 in the *Instructions for Filing a Development Standards Variance* which states "You, or an agent for you, must attend the meeting." Brown asked about requiring owners to attend the meeting. Schweitzer stated that this section of the *Instructions* can be updated, but the Plan Commission did not pass any amendment requiring owners to be present at hearings. Rather, the Plan Commission discussed coaching the President/Chairman running the meetings to table applications when questions could not be adequately answered because of the absence of the owner.

Brown announced the next regularly scheduled meeting of the Board of Zoning Appeals will be December 15, 2014 at 7:00 PM, and the filing deadline for that meeting is November 17.

There being no other business, Chairman Brown entertained a motion to adjourn. Mr. Dammeier made a motion to adjourn the meeting. Mr. Wertz seconded the motion. Motion carried with all in favor. Meeting adjourned at 7:55 PM.

Amy Schweitzer, Secretary