

TOWN OF CLEAR LAKE-BOARD OF ZONING APPEALS MEETING MINUTES-OCTOBER 21, 2019

Board of Zoning Meeting Minutes – Monday, October 21, 2019

Call to order at 7:02 PM by Chairman Jacklyn Howarth

Roll Call: Members present: Mike Hawk (Attorney), Erick Strasser, Kit Tyler, Cecil Fleeman, Chairman Jaclyn Howarth, Don Luepke, and Bonnie Brown, PC President, representing the Z.A.'s office

Others present: 25 people attended

Chairman J. Howarth explained the rules of a hearing to a full house. She then introduced the first case.

Variance Hearing Case 2019-05: Ron and Laurie Sellers

Request for variance from development standards for Ron and Laurie Sellers, 886 SCLD, Fremont, IN 46737. They request relief from UDO Section 5.65(C) Lake Residential Standards, Viewshed. The applicants were asked to come forward.

At this time, Chairman J. Howarth took a question from the audience. Greg Steyer of 888 SCLD, had been informed earlier in the week by Bonnie Brown, President of the Clear Lake Plan Commission, that he should express any concerns of the notification process before the Hearing begins. Due to miscommunication and timing affecting his ability to see the files for this variance, he does not feel that he was given enough time to prepare for tonight's meeting. He also questioned the phrase lakeside "bump out" in the variance application. A lengthy discussion followed.

Motion by: Don Luepke

To proceed with the presentation of Variance request but hold final decision until October 28, 2019.

2nd by: Kit Tyler

Vote: 5-Ayes 0-Nays 0-Absent Motion carried

Due to the final decision being held off, the Findings of Facts review will be postponed until the final decision is reached.

Chairman J. Howarth resumed the meeting where it was left off with an introduction of Ron and Laurie Sellers and their variance request. Mr. Sellers appeared before the Board to petition his variance. He explained their proposed changes and provided drawings of their plans. Discussion followed.

With no further questions clarifying the case from BZA, Chairman J. Howarth requested a motion to close hearing and open for public comments.

Motion by: Don Luepke

To suspend the hearing and open meeting for public comment

2nd by: Kit Tyler

Vote: 5-Ayes 0-Nays 0-Absent Motion carried

Bonnie Brown, PC President, received three emails which Chairman J. Howarth read aloud. Patrick Mitchel, 890 SCLD, opposed the variance request, Richard Aikman, 891 SCLD, opposed the variance request and Paula Druick, 891 SCLD opposed the variance request. Bonnie Brown, PC President stated that she had received a phone call from Gregg Richhart on behalf of the Voeckels, who are here tonight to speak.

Chairman J. Howarth asked for any comments in favor of the variance. No response.

Chairman J. Howarth asked for anyone wishing to speak in opposition. Carol Kurivial, 888 SCLD, asked for clarification about the viewshed. She then voiced her opposition to the variance. David Michael (Mike) Kurivial, 888 SCLD, also opposed the variance. There were no questions at this point. Greg Steyer, 888 SCLD, asked if any other variances would be required for the Sellers' remodel project. He proceeded to list the reasons that he opposes the variance. Heinz Voeckel, 884 SCLD, voiced his opposition.

Applicant's rebuttal: They will be year around residents and the home is small and not suitable for year around living. Two of the current bedrooms are not legal.

Motion by: Don Luepke

To close public comment and reopen the Hearing.

2nd by: Cecil Fleeman

Vote: 5-Ayes 0-Nays 0-Absent Motion carried

The Board determined that aside from the deck, this project would not even require a variance. As long as all of the conditions of the UDO are satisfied for the remodel, the BZA is only here to consider the variance brought before them, concerning viewshed. There will be no vote tonight.

Motion by: Don Luepke

To resume discussion of this matter on Tuesday, October 29, 2019, at 7:30 PM. Any letters of objection must be submitted by 12:00 PM. on Monday, October 28, 2019.

2nd by: Kit Tyler

Vote: 5-Ayes 0-Nays 0-Absent Motion carried

Variance Hearing Case 2019-06: Jill Nichols, 105 Elm Street

Requests relief from 2.12 SR District Development Standard, Section 5.633, General Setback Standards. The proposed new home encroaches upon rear yard 30' setback. J. Nichols presented her request. Ms. Nichols explained that there are two names on the Variance Request, her own as the buyer and Kip/Joanne Gleckler, the sellers. She was advised to do it this way because her purchase of this property is contingent on being able to build the proposed home on this lot, which requires this variance. Discussion followed.

Chairman J. Howarth entertained a motion to close the Hearing and open to Public Comment.

Motion by: Don Luepke

To suspend the hearing and open to public comment

2nd by: Kit Tyler

Vote: 5-Ayes 0-Nays 0-Absent Motion carried

D. Luepke read two letters/emails: Molly Wehrenberg of 101 Elm Street and Gary/Dawn Courtney of 1014 SCLD, both in support of this variance. There were no other comments from the public.

Chairman J. Howarth entertained a motion to close Public Comment and reopen the Hearing.

Motion by: Erick Strasser

To close public comment and reopen the Hearing

2nd by: Don Luepke

Vote 5-Ayes 0-Nays 0-Absent Motion carried

Board discussion, D. Luepke's only concern was the Japanese Maple tree nearby. The builder hopes to work around it.

Motion by: Don Luepke

Close Board discussion and move on to Findings of Facts

2nd by: Erick Strasser

Vote: 5-Ayes 0-Nays 0-Absent Motion carried

Review of Finding of Facts #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: Don Luepke

To accept findings of facts #1

2nd by: Cecil Fleeman

Vote: 5-Ayes 0-Nays 0-Absent Motion carried

Review of Findings of Facts #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: Erick Strasser

To accept findings of facts #2

2nd by: Don Luepke

Vote: 5-Ayes 0-Nays 0-Absent Motion carried

Review of Findings of Facts #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: Cecil Fleeman

To accept findings of facts #3

2nd by: Don Luepke

Vote: 5-Ayes 0-Nays 0-Absent Motion carried

Review of Finding of Facts #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 facts #4

2nd by: Cecil Fleeman

Vote: 5-Ayes 0-Nays 0- Absent Motion carried

Chairman J. Howarth entertained a motion to make a decision on the case.

Motion by: Don Luepke

Make a decision on the Variance

2nd by: Cecil Fleeman

Vote: 5-Ayes 0-Nays 0-Absent Motion carried

Chairman J. Howarth entertained a motion to approve, approve with conditions or deny the Variance.

Motion by: Don Luepke

To approve with conditions that, if granted, a certification of the decision shall be created and recorded at the Office of the Steuben County Recorder.

2nd by: Erick Strasser

Vote: 5-Ayes 0-Nays 0-Absent Motion carried

Roll Call Vote for Decision of Variance 2019-06:

Vote: J. Howarth (approve with conditions), C. Fleeman (approve with conditions), D. Luepke (approve with conditions), E. Strasser (approve with conditions) and K. Tyler (approve with conditions).

Case 2019-06: Approved by BZA

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

Variance Hearing Case 2019-07: Clear Lake Yacht Club, 188 West Clear Lake Drive
Represented by Jim Geiger, 2019 Commodore

Requests relief from 2.22 NC District Development Standards, Section 5.63 A (4) General Setback Standards. The proposed structure encroaches the 50' lake yard setback.

Note: The following Variance Request #2019-08, pertains to this lot as well. Both are contingent on Plan Commission hearing decision for an Administrative subdivision waiver. The Administrative Subdivision must be approved in order for both Variances to be granted.

Jim Geiger presented the case on behalf of the Yacht Club. They would like to put up outdoor restrooms in the sideyard to better accommodate members. An existing temporary structure (shed) would be moved to the north to make room for the restrooms.

Chairman J. Howarth asked for questions from the Board. D. Luepke questioned the square footage of the property and the primary structure. This information is in the paperwork. Discussion followed of non permanent structure and total lot coverage. E. Strasser questioned whether the existing structure could accommodate remodeled, enlarged restrooms.

Chairman J. Howarth requested a motion to suspend hearing and open to public comments.

Motion by: Don Luepke

To suspend hearing and open for public comment.

2nd by: Kit Tyler

Vote: 5 Ayes 0 Nays 0 Absent Motion carried

No correspondence was received and no one spoke in favor, Don Crapo and Susie Compo both spoke in opposition of the project. J. Geiger was given five minutes for rebuttal. He repeated the need for more restrooms to reduce waiting in line and the desire to improve the club for the members without taking away from the original look.

Chairman J. Howarth requested a motion to close public comments and reopen the hearing.

Motion by: C. Fleeman

To close public comments and reopen hearing.

2nd by: Don Luepke

Vote: 5 Ayes 0 Nays 0 Absent Motion carried

The Board discussed the case and determined this to be an interesting case, a variance must be the last resort. B. Brown explained the Administrative Subdivision process.

With no further comments, Chairman J. Howarth entertained a motion for the BZA to move onto Findings of Fact.

Motion by: D. Luepke

To move on to Findings of Facts

2nd by: C. Fleeman

Vote: 5 Ayes 0 Nays 0 Absent Motion carried

BZA final discussion of case 2019-07.

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

Motion by: D. Luepke

To accept Finding of Fact #1

2nd by: C. Fleeman

Vote: 5 Ayes 0 Nays 0 Absent Motion carried

Before moving on, D. Luepke seeks clarification from Attorney Mike Hawk asking if all Finding of Facts must receive a “yes” vote in order to proceed to a final decision. Attorney Hawk confirmed that the statute states that all Facts must receive a favorable vote in order for the Variance to be considered valid.

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. B.) All other options have not been ruled out. NO

Motion by: D. Luepke

To deny Findings of Fact #2

2nd by: Erick Strasser

Vote: 5 Ayes 0 Nays 0 Absent Motion carried

Due to a “NO” vote, it is not necessary to continue with the Findings of Facts but the Board decided to continue for the applicant’s benefit.

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: D. Luepke

To deny Findings of Fact #3

2nd by: E. Strasser
Vote: 5 Ayes 0 Nays 0 Absent Motion 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: E. Strasser
To deny the Findings of Fact #4

2nd by: D. Luepke
Vote: 4 Ayes 1 Nay 0 Absent Motion carried

Chairman J. Howarth entertained a motion to approve or deny the conditions.

Motion by: D. Luepke
To deny the conditions

2nd by: E. Strasser
Roll Call Vote for Decision of Variance # 2019-07:

Vote: J. Howarth-Deny, D. Luepke-Deny, C. Fleeman-Deny, E. Strasser-Deny, K. Tyler-Approve
Case 2019-07: Denied by BZA

New Business

The Town Council has changed their meeting dates for 2020, from the first Monday of each month to the third Monday of each month, and request that the BZA change their meetings from the third Monday to the second Monday of February, April, June, August, October and December.

Chairman J. Howarth entertained a motion to move the BZA's meetings to the second Monday of February, April, June, August, October and December.

Motion by: K. Tyler
To move the BZA meetings to the second Monday of the aforementioned months.

2nd by: D. Luepke
Vote: 5 Ayes 0 Nays 0 Absent Motion carried

Chairman J. Howarth entertained a motion to adjourn.

Motion by: K. Tyler
To adjourn the meeting

2nd by: D. Luepke
Vote: 5 Ayes 0 Nays 0 Absent Motion carried

Meeting adjourned at 9:43 p.m.

Board of Zoning Appeals Chairman: Kit Tyler for Jaclyn Howarth

Attest: Brenda Eby, Town Clerk