

Town of Clear Lake - Board of Zoning Appeals Meeting Minutes – December 21, 2015

Chairman Bonnie Brown opened the December 21, 2015 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
Don Luepke
Bruce Moody
Tom Schmidt
John Wilhelm

Also present:

Amy Schweitzer, Zoning Administrator and Recorder of the minutes of the meeting
Michael Hawk, Attorney for the Board of Zoning Appeals

Chairman Brown stated that Mr. Moody was the alternate filling in for Ron Walters. Brown determined a quorum was present. Ms. Brown read the Board's Introductory Comments that identifies membership requirements and primary duties of the Board of Zoning Appeals.

Chairman Brown stated the Board would hear Case #2015-09, a Variance from Development Standards filed by Brad and Cheryl Andres at 663 South Clear Lake Drive. Mr. and Mrs. Andres are requesting relief from *Section 2.12 Minimum Front Yard Setback* and *Minimum Rear Yard Setback*. The Andres would like to construct an addition onto the south side of the existing primary structure.

Mr. Andres, introduced himself and thanked the Board for the opportunity to talk about the project and to have their family present for support. Andres told the Board that Mr. Doug Schilling from Thiel Supply Center was going to attend, but had family in town for the holidays. Andres stated they knew there were things they wanted to change after buying the property, but did not realize how much zoning would impact those things. He gave the Board some details on the cottage: the water heater is located outside the cottage in a shed; the pressure tank for the well is outside; the cottage cannot be used in the winter; the kitchen and bathroom drains both exit outside the house; neither bedroom has a closet; kitchen and bathroom are both extremely small.

Mr. Andres told the Board they would like to add on to the existing cottage and remove the existing deck. Andres added that removing the deck would give them more room to park vehicles. Andres explained that Option 1 was for the addition to be a story and a half in height. This would allow for a larger kitchen and master bedroom. Option 2 would be the same size addition, but a single story in height.

Mr. Schmidt asked if there would be any changes to the rest of the house. Andres commented that insulation would be added and yellow shag carpet would be removed. Mr. Andres also told the Board that everything would be repainted and the existing fence would be repaired to get the property looking nice.

Mr. Luepke asked about the type of siding. Andres stated the main cottage has aluminum siding, the guest cottage has vinyl siding, and the addition would have vinyl siding.

Chairman Brown asked about the size of their other properties. Mrs. Cheryl Andres stated that “Grandma’s cottage” at 656 South Clear Lake Drive is 3-bedroom, 1-bath; the guest cottage has a toilet and a sink.

Mr. Luepke asked when the Andres’ purchased the property. Andres stated September 2015. Luepke asked if they intended to add on immediately, and Mr. Andres responded yes. Luepke expressed concern that real estate agents should be aware of zoning regulations and encouraging buyers to check on local zoning regulations if they are planning a project.

Mr. Wilhelm asked why the Andres purchased the cottage. Mrs. Andres stated they didn’t realize they wouldn’t be able to add on to it. Mrs. Andres told the Board she grew up going to her grandparents’ cottage, and was shocked to find out the water heater at 663 South Clear Lake Drive was outside. She told the Board her immediate thoughts were to add on to the house to fix issues like the water heater being outside. She stated she didn’t know there would be a problem with their plans to add on.

Chairman Brown asked about the survey showing the “guest cottage” labeled as a shed. She also said the survey shows the addition to be 28-feet as opposed to 26-feet which is stated throughout the application. There were also questions about parking. Mr. Andres stated the addition would be the current depth of the cottage – 26-feet. He told the Board that the property had a big yard and they would not be parking on the adjacent DNR property. Andres stated because of the soil being sandy, the grass will take vehicles parking on it.

The Andres explained that the family cottage at 656 South Clear Lake Drive is partially owned by a brother. Because the house at 656 would be difficult to add on to, when the opportunity to purchase 663 came up, they decide to buy it. Staff Amy Schweitzer confirmed any additions to the “family cottage” at 656 South Clear Lake Drive would require variances because there are three “front yards” and the fourth yard is along the channel.

Chairman Brown questioned that one part of the Andres’ presentation was that the cottage was bought to be an “overflow” cottage. With five children, it seems the overflow cottage isn’t big enough. Mrs. Andres stated that is a misinterpretation. The reason for purchasing 663 is because there are five children whom are accustomed to going to a year-round cottage, and this cottage (at 663) is not a year-round cottage. Mrs. Andres stated that winterizing the cottage has nothing to do with the overflow. They simply do not want frozen/busted pipes, and there is no place to put the water heater inside.

Brown asked about the guest cottage bathroom. Mrs. Andres stated the guest cottage bathroom does work and it does have hot water.

Michelle Beck, Mrs. Andres's daughter, stated she grew up going to the lake and would like to be able to do that with her kids, but there really isn't room.

Board member John Wilhelm asked about the two porches. Mr. Andres stated they would be painted and cleaned up. Wilhelm asked if the porch areas could be enclosed and used as the addition. Andres stated that would leave them without a porch which is not really what they wanted.

In referencing the list of nonconformance on this property, Mr. Luepke asked about SR (Single-family Residential) parking. The size of the space should be 9-feet x 18-feet per Section 5.49D.1. Also, off-street parking spaces should not be fully or partially in a ROW (right-of-way), and furthermore, 5.50B states the parking space shall be on the same lot as the dwelling unit. Mr. Luepke stated the required parking really covers every blade of grass on the lot.

Mr. Wilhelm asked if the applicant had considered interior remodeling to create more living space, specifically with making use of the porches. Mr. Andres said the plumbing drains are not even located within the house, and there is really no way to get under in the crawl space. Wilhelm asked about digging out the crawl space. Andres expressed no interest in re-working the interior of the cottage or digging out the crawl space. Wilhelm asked about adding a second story to the existing cottage. Schweitzer reminded the Board that the same variances would be required for a second story on the cottage. Concerns were expressed about the foundation being strong enough to support a second story.

Mr. Wilhelm asked if Mr. Andres was willing to look into alternatives, because Wilhelm stated his vote would be no to the project as proposed. Mr. Andres stated he was willing to look at alternatives, and added that six vehicles could be physically parked at the property.

Chairman Brown commented that the street in front of Mr. Andres property was a busy spot. She also questioned Section 8.04 A.1. Legal Nonconforming Building Expansion, stating that such a building is permitted to expand in area and in height as long as the expansion complies with the UDO. Schweitzer stated that this type of expansion is permitted *by right* for a legal nonconforming building, but if such an expansion does not comply with the provisions of the UDO, then a variance could be sought. Such is the case with Mr. Andres. Mr. Hawk agreed.

There was additional discussion about conditions, the existing sheds, and parking issues for the property.

Chairman Brown entertained a motion to suspend the regular meeting and open the Public Hearing. Mr. Luepke made a motion to suspend the regular meeting and open the Public Hearing. Mr. Wilhelm seconded the motion. Motion carried with all in favor.

Matthew Grube, 129 Lakeside Court, introduced himself and stated he was part of the Arcadia Beach Association. He told the board that many of the Arcadia Beach properties are

nonconforming. Mr. Grube stated that he liked what he was hearing from the Board. He stated he was in favor of the project moving forward if the owner agreed to eliminate some of the nonconformity and accessory structures.

Mr. Darrell Lapham, 671 South Clear Lake Drive, introduced himself. He asked the Board at what point is the Town going to let these nonconforming structures look better. Chairman Brown stated owners of nonconforming structures are allowed to make improvements to a nonconforming structure and can add on if the addition meets the standards of the Unified Development Ordinance.

Brooke Brown, 656 South Clear Lake Drive, introduced herself. She asked who is going to buy these tiny properties if nothing can be done to improve them.

Chris Folland, 52 West Clear Lake Drive, introduced himself and offered two points for the Board to consider. First, these lots were nonconforming in 1971, commenting this part of the lake was platted when the cottages were basically fishing shacks. Two, the Board should only be concerned with what is going on this parcel, not what is going on with other parcels.

Mr. Grube asked about replacing these non-conforming structures if they were destroyed by an Act of God. Staff Schweitzer stated the UDO does address these situations, but some are handled differently. Schweitzer agreed to send this section of the Unified Development Ordinance to Mr. Grube via email.

Hearing no other comments from the public, Chairman Brown entertained a motion to close the Public Hearing and re-open the regular session of the Board of Zoning Appeals meeting. Mr. Moody made a motion to close the Public Hearing and re-open the regular session of the Board of Zoning Appeals meeting. Mr. Luepke seconded the motion. Motion carried with all in favor.

Chairman Brown entertained thoughts from the Board. Mr. Moody asked about eliminating some of the non-conforming issues and the willingness of the owners to do that. Attorney Hawk stated that conditions or commitments can be part of approval.

Chairman Brown suggested tabling the application and having the applicant revise and present the revisions at the Board's next meeting. Mr. Andres stated he was not interested in waiting, and offered to remove both sheds and the deck.

Mr. Wilhelm asked about securing the services of an architect to design the street façade that incorporates the old roof structure. There was discussion about roof tie-ins if the addition ended up being one and a half stories. Wilhelm commented that the Andres property was an entrance into the Town, and he believed it was important to improve the aesthetics of the property.

There was additional discussion among Board members about the quality of the work. Mr. Andres told the Board he would be doing most of the work himself with Theil Supply supervising. Andres said he has worked in excavating for 32 years, and assured the Board it would be built to code.

The Board discussed the need to see renderings of the façade for the one and a half story project. Mr. Andres stated he would just make the addition a single story so the roof would be a continuation of what is there, and pushed for a decision tonight offering to clean up the nonconformities that have been discussed.

Chairman Brown asked for further discussion. Staff Schweitzer stated there were a couple of letters received from interested property owners. Schweitzer read them aloud:

- Jerome and Phyllis McDaniel, 657 South Clear Lake Drive, would be delighted to see the improvements the Andres have proposed.
- Jacqueline Feil, 667 South Clear Lake Drive, has no objection to the project.
- Darrell and Kayla Lapham, 671 South Clear Lake Drive, support the proposed changes to 663 South Clear Lake Drive.
- Martin and Janine Erlenbaugh, 224 Outer Drive, support the efforts to improve the cottage at 663 South Clear Lake Drive and have no objection.

The Board discussed the following conditions:

Removal of the two sheds;

Removal of deck;

Removal of fish station (attached to the guest cottage that encroaches into VeeCee Drive right-of-way);

14' x 20'4" single story addition with the roof line to match the existing roof line with a single-step side entry.

The Board discussed parking issues. Ultimately, there was agreement that parking could occur on the grass surface. There was discussion about aesthetics, and the condition that the entire house be re-sided was added.

Hearing no additional discussion, Chairman Brown entertained a motion to move forward with the findings of fact for Case #2015-09. Mr. Luepke made a motion to move forward with the findings of fact. Mr. Schmidt seconded the motion. Motion carried with all in favor.

Chairman Brown announced the Board would make findings of fact for Case #2015-09, a Development Standards Variance filed by Brad and Cheryl Andres for 663 South Clear Lake Drive for relief from Section 2.12 Minimum Front Yard Setback and Minimum Rear Yard Setback.

Finding 1: *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 December 8, 2015; 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. Luepke made a motion to accept Finding 1 as presented. Mr. Moody seconded the motion. Motion carried with five voting in favor and zero voting against.

Finding 2: *The approval of the variance will not be injurious to the public health, safety, morals and general welfare of the community because (a) the distance between South Clear Lake Drive and the proposed addition is adequate to accommodate the typical traffic*

conditions on that specific stretch of South Clear Lake Drive; (b) views of the lake from adjacent properties will not be impacted by the project; (c) this home was built long ago on a very narrow platted lot, which up to now, has not negatively impacted public health, safety, morals, or general welfare of the community. However, under the current UDO there is no remedy for the several noncompliance issues which would allow improvements.

Mr. Wilhelm made a motion to accept Finding 2 as presented. Mr. Moody seconded the motion. Motion carried with five voting in favor and zero voting against.

Finding 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 because (a) the use of adjacent property as residential areas and the Public Access Site will not change as a result of this project; (b) the value of adjacent property will not be substantially impacted by this project because the proposed project includes cleaning up and improving the condition of the property; (c) this property has adequate areas (currently grass) to accommodate parking.*

Mr. Schmidt made a motion to accept Finding 3 as presented. Mr. Wilhelm seconded the motion. Motion carried with five voting in favor and zero voting against.

Finding 4: *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because (a) this lot is less than 40-feet deep meaning after the Minimum Front Yard Setback and the Minimum Rear Yard Setback, there is no building envelope; and (b) this owner did not create the many practical difficulties on this property. We believe that variances with conditions is warranted in this unusual situation.*

Mr. Wilhelm made a motion to accept Finding 4 as presented. Mr. Moody seconded the motion. Motion carried with five voting in favor and zero voting against.

Chairman Brown announced all of the findings of fact had been made in the affirmative and entertained a motion for a final decision. Before a motion was made, the Board discussed and agreed upon the following conditions:

1. Removal of two sheds.
2. Removal of fish cleaning station.
3. Removal of wooden deck.
4. 14' x 20'4" single story addition to the south, roof line to match existing, step entry out of the south side.
5. Entire house gets re-sided.

Mr. Moody made a motion to approve with conditions Case # 2015-09, a Variance from Development Standards filed by Brad and Cheryl Andres for 663 South Clear Lake Drive, granting relief from *Section 2.12 Minimum Front Yard Setback* and *Minimum Rear Yard Setback*. Mr. Wilhelm seconded the motion. Motion carried each member of the Board voting in favor via a roll call vote.

Chairman Brown asked for approval of the minutes from the October 19, 2015 meeting, noting one correction. Mr. Luepke made a motion to approve the minutes from the October 19, 2015 meeting as amended. Mr. Moody seconded the motion. Motion carried with all in favor.

Brown asked for other items of business. Mr. Luepke asked about sending local realtors letters educating them about local regulations and encouraging them to “check” on those regulations.

Mr. Chris Folland, a Town Council member from the audience, mentioned he recently learned from an IACT attorney site visits are not subject to the Open Door Policy. Mr. Hawk will look into this closer.

Chairman Brown asked about the upcoming February 15, 2016 meeting. Schweitzer told the Board that nothing had been filed, but a couple of potential variance projects seem to be in the works.

Hearing no additional business, Mr. Luepke made a motion to adjourn the meeting. Mr. Moody seconded the motion. Motion carried; meeting adjourned at approximately 9:15 PM.

Respectfully Submitted:

Amy Schweitzer, Secretary