

Minutes of the December 14, 2004
Regular Meeting of the
Marshall County Board of Zoning Appeals
Second Floor Commissioner's Meeting Room, #203
Marshall County Building
112 West Jefferson Street
Plymouth, IN 46563

MINUTES

Chairman Foster Davenport called to order the December 14, 2004, meeting of the Marshall County Board of Zoning Appeals at 7:30 p.m. Present were Board Members Foster Davenport, Don Ecker, Robert Flora, Harold Van Vactor, Zoning Administrator, Troy Kiefer, Planning Assistant, David Rockaway, and interested parties. Absent was member Wayne Neidlinger.

The first item of business was review of the minutes of the November 9, 2004 meeting. Mr. Ecker moved and Mr. Flora seconded a motion to approve the minutes as written. The motion passed by acclamation.

The second item of business, case 04-BZA-39, Bryan Miller, A request for a Variance of Development Standard to reduce the South rear yard setback from twenty feet (20') to thirty four inches (34") and to reduce the West side yard setback from ten feet (10') to four feet (4') in order to construct an addition to an accessory structure on property located at 20905 North Lake Drive, Koontz Lake, in a L-1, Lake Residential District, Section 7 of Polk Township. Mr. & Mrs. Miller were present to represent the request. Mr. Kiefer reviewed the details and presented the Findings of Fact. He stated that currently there are two accessory buildings built corner to corner at right angle to each other. He stated that the request is to fill in the 9' x 9' area.

Mr. Davenport asked Mr. Miller if the buildings were portable? Mr. Miller stated that they are built upon a concrete slab. He stated that he had recently had the property surveyed. Mr. Davenport asked if there was a variance granted for the buildings to be in that location? Mr. Miller stated that the buildings have been there since the eighties and were recently resided to match the home. Mr. Miller stated that he purchased the property last March.

Mr. Miller added that he owns all of the surrounding properties, so it would not infringe upon anyone.

Mr. Davenport moved and Mr. Van Vactor seconded a motion to open the public hearing. The motion passed by acclamation.

- Debra Hochstetler, 4293 Breezy Point Lane, spoke in favor of the request. She stated that she would approve as long as they received the proper permits.
- Jim Hochstetler, 4293 Breezy Point Lane, spoke in favor of the request. He stated that they should receive the variance.

There was no one else to speak either for or against the motion. Mr. Davenport moved and Mr. Flora seconded a motion to close the public hearing. The motion passed by acclamation.

Mr. Davenport stated that with only 34" from the property line, if one property were to be sold it could cause a problem. Mr. Miller stated that after the first of the year, it is his intention split the lot in two to increase the property where he currently lives. He stated that in a couple of months, it would be further than 34". Mr. Davenport asked, once the property is split how far would it be to the property line at that time? Mr. Flora stated that it would not require a variance. Mr. Miller stated that would be correct. Mr. Davenport stated that only the 4' variance would only be necessary. Mr. Miller stated that would be correct, if he was able to follow through with his plans.

Discussion was held regarding the placement of the proposed new building and the proposed split of the lot.

Mr. Flora moved and Mr. Van Vactor seconded a motion to deny the thirty four inch (34") South rear yard setback and to approve a four foot (4') West side yard setback request. The motion passed by a unanimous vote of approval.

Mr. Davenport stated that the Mr. & Mrs. Miller's property would come up for discussion again during the Violation portion of the meeting.

The third item of business, case 04-BZA-44, Wayne Farrington, A request for a Variance of Development Standard to reduce the South side yard setback from four feet (4') to three feet (3') of an existing dwelling on property located at 3711 Lake Shore Drive, Lake of the Woods, in an L-1, Lake District, Section 6 of

German Township. Mr. Chris Pejza, Contractor, was present to represent the request. Mr. Kiefer gave the details for the request and presented the Findings of Fact. He stated that earlier in the year there was a Building Permit applied for a home addition to the East side of the existing home. He stated that an existing garage was removed and an addition placed onto the home. He stated that there was confusion as to the requirements or location of the property line, as there was a one foot overhang which encroaches upon the setback.

Mr. Pejza presented pictures of the building in question. He stated that weather permitting they intend to side and place gutters so that there is no problem with shedding water. Mr. Ecker asked how far it is between the houses. Mr. Pejza stated that it was 8' from foundation to foundation. Mr. Pejza stated that the neighbors had a survey done. He stated that initially they had a problem and they discussed it. He stated that he thought that everyone was neighborly and it would not be a problem. He stated that the home owner wanted a window and needed the off set. Mr. Ecker stated that if they would not have created the offset he would not even be there. Mr. Pejza stated that was correct. Mr. Ecker stated that if they needed to access the roof, the only place to place the ladder would be on the neighbor's property. Mr. Pejza stated that was correct.

Mr. Davenport moved and Mr. Flora seconded a motion to open the public hearing. The motion passed by acclamation.

- Nancy Wilcox, 3717 Lake Shore Drive, spoke in opposition of the request. She presented pictures to the board for reference. She stated that they remodeled their home as well. She stated that they had a survey done so that they would be certain of the property lines. She stated that they went ahead with their construction even after they knew where the property lines were located. She stated that they graded the property to run off onto their property. She stated that the foundation is 3' 9" from the property line. She stated that it prohibits them from accessing the front of their home.

Mr. Flora asked Mrs. Wilson if they had the survey done before construction started. Mrs. Wilson stated that was correct, it was before any digging was done. Mr. Flora asked if they called it to the neighbors attention that it was only 3' 9" to the proposed foundation. Mrs. Wilson stated that they had another survey done after the foundation was in place, and then they found the location. She stated that they spoke to the property owner. Mr. Ecker asked if both surveys matched. Mrs. Wilson stated that they did.

- Dale Pittman, 3385 East Shore Drive, spoke in opposition of the request. He stated that he owns the empty lot at the end of the corner. He stated that he would like to know what the real setback is for the Lake. He stated that running water onto another persons' property is not a good set up.

Mr. Kiefer explained that the Zoning Ordinance requires hat a side yard setback be ten feet or ten percent of lot width, which ever is less.

Mr. Pejza stated that it is very important to put the eaves up so that they do not run the water onto the neighbor's property.

There was no one else to speak either for or against the request. Mr. Flora moved and Mr. Ecker seconded a motion to close the public hearing. The motion passed by acclamation.

Mr. Davenport asked Mrs. Wilson if she is saying that the foundation is 3'9". She stated that it is 3.09'. Mr. Kiefer stated that it would be 3' 1.2". He stated that they have never measured to the inch. He stated that while there is a survey, he did not know if the board wanted to deal with 1.2".

Mr. Ecker stated that the board would want to deal with the eave. Mr. Flora asked Mr. Pejza if this was just a mistake. Mr. Pejza stated that if they had known that they were that close to the property, they could have shortened the addition. Mr. Flora asked if the neighbors discussed the issue. Mrs. Wilson stated that their contractor Jerry Meister, had talked to Mr. Pejza regarding the issue. Mr. Pejza stated that they had a neighborly agreement and there would not be a problem. He stated that once he found out that there was a problem he contacted the owners. He stated that the owners told him that they talked with the neighbors and there would be no problem. Mr. Flora asked Mr. Pejza at the time of construction, did he make the Farrington's aware that there could be a problem with the eaves? Mr. Pejza stated that the discussion was never regarding the eaves, but the off set of the home.

Mr. Davenport asked if the eave could be shortened enough to incorporate an eave. Mr. Pejza stated that the owners would rather not, but would if they had to. Mr. Flora stated that when homes have to be packed in so tight, you get into a matter of inches. Mr. Pejza stated that there would not be a problem except for the neighbors. He stated that he originally thought that the neighbors were in

agreement. Mr. Flora stated that it would have been an agreement between neighbors, but now he is faced with making an agreement with the board. Mr. Flora asked Mr. Pejza if prior to construction, he had no idea that the measurement was from the eaves. Mr. Pejza stated that was correct. Mr. Flora asked if the Farrington's were relying on him as the contractor to have the information. Mr. Pejza stated that was correct.

Mr. Flora asked how much they can reduce the overhang by and still have an eave trough? Mr. Davenport stated that he thought maybe three inches. Mr. Pejza stated that he did not think it would matter. Mr. Ecker stated that it would matter how much he was infringing upon the setback. Mr. Pejza stated that if this is a problem from neighbor to neighbor, the Farrington's might choose to not put gutter on the building.

Mr. Ecker asked where the property owner was. Mr. Pejza stated that she had another engagement. Mr. Ecker stated that he was concerned that she was not in attendance. He stated that the Wilson's have a legitimate complaint and the BZA has a legitimate complaint.

Discussion was held regarding the ramifications of cutting down the size of the eaves.

Mr. Flora moved and Mr. Ecker seconded a motion to approve a three foot six inch (3'6") setback to accommodate an eave trough. The motion passed with a unanimous vote of approval.

The fourth item of business was case, 04-BZA-45, Janet Herrera, A request for a Variance of Development Standard to reduce the East front yard setback from thirty five feet (35') to twelve feet (12') in order to construct a new dwelling on property located at 106 Wood Street, Lapaz, in a U-1, Urban Residential District, Section MRL 5 of North Township. Mrs. Herrera was present to represent the request. Mr. Kiefer reviewed the details of the request and presented the Findings of Fact. He stated that the lot is too small to build a home and meet the setbacks.

Mr. Davenport moved and Mr. Van Vactor seconded a motion to open the public hearing. The motion passed by acclamation.

- Kris Walter, 109 Wood St., asked how the home was going to be placed on the lot.

Mr. Kiefer read correspondence in favor of the request from:
George & Kris Walter, 109 Wood Street.
Lorraine Dove, 101 Wood Street.

There was no one else to speak either for or against the request. Mr. Davenport moved and Mr. Flora seconded a motion to close the public hearing. The motion passed by acclamation.

Mr. Davenport moved and Mr. Van Vactor seconded a motion to approve the request. The motion passed by a unanimous vote of approval.

The last item of business was the Violation Report. Mr. Davenport invited the Miller's to have a seat at the front table. Mrs. Miller stated that they were not informed that the violation was to be discussed. Mr. Kiefer stated that there is no requirement to notify. Mrs. Miller asked how the neighbors knew. Mr. Kiefer stated that he was asked what was being done regarding the building on the Miller's property, he stated that he told them that it would be discussed at the meeting. Mr. Kiefer read a letter submitted to BZA members by him as Plan Director. Mr. Ecker asked if there was a dollar amount set for when a building permit is required. Mr. Kiefer stated that he did not know of a section of the Zoning Ordinance that addressed monetary restrictions.

Mr. Miller presented information regarding the structure that he had built on his property. He stated that he built the structure to house his boating equipment. He stated that it anchored by a pole. Mr. Flora asked if one side was enclosed. Mr. Miller stated that he has three sides closed. He stated that he gave the contractor the letter he received from Mr. Kiefer and stated that those were the restrictions.

Mr. Davenport asked what the dimensions were for the structure. Mr. Miller stated it was 38' x 28' x 9'. Mr. Van Vactor stated that he thought of a carport as being for one car and being able to be moved. Mr. Ecker stated that he agreed.

Further discussion was held regarding the building.

Mr. Flora moved and Mr. Ecker seconded a motion to consult with the County Attorney for interpretation. The motion passed by acclamation. Mr. Kiefer stated that the item would be on the agenda for next month for discussion.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by voice vote.

Respectfully submitted,

Harold Van Vactor
Secretary