

Minutes of the September 14, 2010
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Don Ecker, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, September 14, 2010, in Room 203 of the Marshall County Building. Present were: Commission Members Don Ecker, Stan Klotz, Deb Griewank, and Foster Davenport, Plan Director Ralph Booker, Secretary Lori Lowry and interested parties. Member absent was Bob Flora.

The first item of business was the review of the minutes from the August 10, 2010, meeting. Mrs. Griewank moved and Mr. Klotz seconded the motion to approve the minutes as written. The motion passed by acclamation.

The second item of business was 10-BZA-22 LONG, Dolores – The applicant has submitted an Administrative Appeal against the issuance of ILP Building Permit 10302 for an upper 16x20 deck and a lower 16x16 deck in that they do not meet the lake side setbacks. Mr. Roy Burbrink was present to represent Mrs. Dolores Long. Mr. Booker presented the findings of fact. On July 22, 2010 the Plan Commission was informed that there were decks being built at 10147 Pretty Lake Trail and was asked if any permits had been issued. Only July 23, 2010 our office went to the property and found decks which were 98% complete. A note was left with the owner and followed up with correspondence. On July 26, 2010 the owner applied for an ILP/Building Permit. It states the decks are 35' from the established shore line. It was determined if it was 35' then it would meet the established building line which is allowed by Article 3, Section 130, Zoning District Standards Number 3. Averaging setbacks along road or street frontages, which states "Where the Zoning Administrator has determined that an average front yard setback line has been established prior to the adoption of this ordinance, the minimum front yard setback shall be that established average front yard setback; or ten feet; whichever is greater." The Technical Review Committee did look at the permit and some did discuss if we should do a site visit. In retrospect this should have been done. It was determined if it was 35' from the lake it was within the average of all decks. The

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Longs claim the lower deck is actually 25' from the lake. The deck blocks their view of the lake. They are asking the decks to be removed.

Mr. Burbrink presented a binder to the board and the Plan Director showing their case. The Administrative Appeal is for the expansion of the original deck (16') which includes some decking on the SE corner and a stairwell that goes down and the lower deck which they find most offensive. During his presentation he emphasized the following: the chronological order of events, average setbacks and preserving view-sheds.

Ms. Dolores Long presented a poster to the board that included pictures of the view prior to the building of the decks and after. She explained to the board when the building project began, her concern about the view she will no longer have, communication between her and the Neidig's, and the involvement of the Plan Commission.

Mrs. Griewank moved and Mr. Klotz seconded the motion to open for public hearing. The motion passed by acclamation.

- Dale Gott – 10105 Pretty Lake Tr. – Mr. Gott represents Pretty Lake Association as he is the President. He protests this variance as he believes their lake currently is uniform and has good continuity. Believes in standards that are set as it brings harmony amongst neighbors.
- Chris Fox – 10211 Pretty Lake Tr. – Built a home four years ago and conformed to all rules and regulations and supports Mrs. Long's request.
- Tom Wiers – 10123 Pretty Lake Tr. – Is a new owner and is in the process of a building project and has hired a qualified professional to make sure all requirements are met. Believes there are standards in place and people should adhere to those standards.
- Robert Kizer – 10369 Pretty Lake Tr. – Believes the setbacks should be adhered to.
- John McNeil – 10411 Quince Rd. – If rules are not followed there is going to be a variety a setbacks being applied. Supports Mrs. Long and her position.
- Deborah Yocum – Sent a letter and believes if this is allowed a bad precedent will be set for all property owners.
- Albert & Pamela Gierut – Sent a letter stating they are in favor of the appeal regarding the decks.
- Dan Neidig – 6100 Michigan Rd. – Is a son of Noble and Barb Neidig and is representing his parents due to their health. Their intention is to do what is right and be able to get along with the other neighbors. Understands that there were things done not the right way, but from this point they ask for a reasonable solution that financially doesn't strap them. Wondered if the view is a concern if they could take down the railing if that could be considered.
- Mr. Burbrink wanted to clarify that this hearing today is not about a variance.

Mrs. Griewank moved and Mr. Davenport seconded the motion to close the public hearing. The motion passed by acclamation.

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Mr. Booker clarified to the board the definition of a front yard in the definition section of the ordinance. This office has interpreted that front yard on a lake residential property is the lake side. In reference to taking down railings on a deck, that would be against building code.

The board discussed their options and referred to the findings of fact. The board reviewed the facts presented.

The board asked if the Neidig's took off ten feet of the bottom deck, and bring uniformity if the Long's would be satisfied. Mr. Burbrink stated that his client would only be content with what was the original deck which is about 45' from the high water mark. They would also not agree with both decks being even, for the reason that it invites all kinds of problems. Mr. Burbrink contends that the Zoning Ordinance talks about averaging, but it's only with street and road frontages not with rear yard.

Mrs. Griewank asked the distance of the Long's deck to the water's edge. It was said that it's probably 35'; however, this deck is grandfathered and is built over the existing slope of the earth and is not an elevated deck or new construction. Mr. Davenport commented that 35' seems like uniformity around the lake.

While reviewing the maps Mr. Klotz figured that the Long's deck is 28' from the high water mark.

With permission from the board Mr. Dan Neidig stated that they would be willing to move the lower deck back even with the Long's. Mr. Burbrink stated, "Two wrongs don't make it right".

With permission from the board Mr. John Long (Dolores' son) stated that he felt that if the steps were back to the 45' mark and the lower deck was even with Don Neidig's deck he wouldn't have a problem and would be happy.

Mr. Burbrink wanted to remind the board that it is Mrs. Dolores Long's property and she continues to contend the board needs to adhere to the existing setbacks of 45'.

Mrs. Griewank seemed to agree with Mr. Long's suggestion to move the deck back and believes it should make everyone happy.

The board contends that they would like to see uniformity which seems to be 35'. Mr. Ecker asked Mrs. Long if she would agree if the lower deck were to match or be close to matching the upper deck if that would be a compromise that she would be willing to accept.

After continued discussion the following compromise was made: The Neidig's would keep the upper deck with the beveled edge (which gives them another 4 or 5 feet), keep the stairwell, all the lower stuff would have to be moved back approximately 14 to 16 feet towards the house and away from the lake.

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The board asked Pretty Lake Association President, Mr. Gott, his opinion of this compromise. He believes if this measurement will make it standard with the rest of the property owners around the lake it will bring unity. It should give a nice appearance and would like to keep harmony amongst neighbors.

Mrs. Griewank made a motion to grant the appeal and ask Mr. & Mrs. Nobel Neidig to remove or take back the lower deck fourteen feet (14') away from the lake and they shall have sixty (60) days to comply with this request, seconded by Mr. Klotz. Motion carried with a voice vote 4-0.

Mr. Booker advised Mrs. Dolores Long that she has won the appeal and she is due a refund of the \$75.00 appeal fee. She was asked to come into the Plan Commission Office to sign a claim form.

The third item of business was 10-BZA-23 SHIRK, Lawrence – A request for a Special Use to build a new steel building, remodel an old barn and add employees to his existing permitted woodworking workshop. Mr. Lawrence Shirk was present to represent his request. Mr. Booker presented the findings of fact. The applicant is asking for a Special Use to expand his Variance of Use granted in 1998. He wishes to remodel an old barn into a three car garage, tear down an old Quonset hut and replace it with a 50' by 120' NuCorr Steel structured building. He would also increase his allowed employee number from four to nine. Upon visiting the present operation, found it to be very well maintained.

Mr. Shirk stated that once he cleans up around the Quonset he would like to build another building for more efficient production. As far as employees he currently has five employees. There are no plans in the works for additional employees, but would like to have the ability to increase to nine if his business were to increase.

Mr. Davenport moved and Mrs. Griewank seconded the motion to open for public hearing. The motion passed by acclamation.

- Jack Kinninger – 7990 N. 475 E. Rochester, IN Fulton County – Is a neighbor and is in favor of his request as he keeps his current property clean and neat. Would be in favor of anything he does as it would improve the neighborhood.
- John Shirk – 5176 SR 110 – Is in favor of the project and will reduce outside clutter as it will be inside the building.

Mr. Davenport moved and Mrs. Griewank seconded the motion to close the public hearing. The motion passed by acclamation.

The board members all commended Mr. Shirk on the looks and neatness of his property.

Mr. Booker informed the board and the applicant that this building will be a commercial building and will have to be approved by the state and that he will also need to provide our office with a drainage plan as well.

Mr. Davenport made a motion to approve the Special Use to build a new steel building, remodel an old barn and to add up to 9 employees to his existing permitted woodworking workshop located at 4920 SR 110, Rochester, IN, Zoned A-1, seconded by Mr. Klotz. Motion carried with a voice vote 4-0.

The fourth item of business was 10-BZA-24 HUNDT, Chris – A Variance of Development Standard to request to reduce the minimum lot width from 60' to 46' and a variance from the side yard from 10' to 3'2". Mr. Chris Hundt was present to represent his request. Mr. Booker presented the findings of fact. The applicant wants to change the parcel line between both of the two parcels he owns. A building (an old Boy Scout Building) will be tore down and a residence (converting and adding to a garage) is to be built on the northern parcel. The home left on the southern parcel needs a variance from the side yard setback. These parcels were platted as lots #12 and #13 of a Re-Plat of Lagoon Beach Addition. Prior to Lagoon Beach Addition this land was owned by the Boy Scouts. The northern portion of the existing home is the Boy Scout building which is what is proposed to be torn down. It presently is built across the building line which is being asked to be changed. Even with this building being tore down the present home still goes across the existing building line between the properties. With the new dividing line the present home will be 3'2" from its northern line and needs a variance.

Mr. Hundt stated that when he purchased the property the parcel line runs right through the center of his home and the old boy scout building. Sewage and property taxes are paid on both parcels. He would like to see both of these parcels split to have two buildable lots.

Mr. Hundt said the plan for the parcel with the garage is to sell it to a friend and he would renovate the existing garage and build a house on it. Then the other parcel would also be renovated by removing the existing boy scout building and cleaning up the property to improve the overall property and make the structure more presentable.

Mrs. Griewank moved and Mr. Klotz seconded the motion to open for public hearing. The motion passed by acclamation.

- Dave Gilley 4528 W. Shore Drive, Bremen – Neighboring property owner has no objections to their request as it will improve the area, property values and even increase his view to the lake.
- Don Gordy – Interested in purchasing the one lot and is also in favor of the request.

Mrs. Griewank moved and Mr. Klotz seconded the motion to close the public hearing. The motion passed by acclamation.

Mrs. Griewank made a motion to approve the request to allow a Variance of Development Standard to reduce the minimum lot width in accordance with the Replat of Lots 12 and 13 in the Replat of Lagoon Beach Addition Lake of the

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Woods, and a variance from the side yard from 10' to 9'7 ¼ ", seconded by Mr. Klotz. Motion carried with a voice vote 4-0.

Violations:

Granning, Egolf, Murray, Cao, Forrester, Hochstetler, and Hooper.

Helton/Tackett – The property is nearly all cleaned up with a small amount of debris to be cleaned up. Mr. Lukenbill was directed to send a letter giving him an additional 30 days to have the property completely cleaned up.

Steve Eckert – The property on 4th road is still scrapping and needs cleaned up. Mr. Eckert the property owner said that it will be cleaned up.

Mr. Tibbs – The property still has junk and debris around the house and has more than 4 dogs. The board recommended that Mr. Booker have the attorney send a violation letter of having more than four dogs on the premises and still has junk and debris on the property after a violation notice was previously given.

Other:

There are no court cases.

On September 16th there will be an informational meeting given by the Marshall County Plan Director and Fulton County Plan Director on Area Zoning vs. Advisory Zoning. All of the towns and their board members were invited to attend.

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

Respectfully submitted

Deb Griewank