

## **Culver Board of Zoning Appeals**

### **Minutes: December 17, 2020**

Due to the Covid-19 restrictions, the Culver Board of Zoning Appeals met in the Culver Beach Lodge to allow for social distancing. There was also an option to join through Microsoft Teams or through a conference call number for those without internet access.

Dan Adams called the meeting to order and led in the Pledge of Allegiance.

The Culver Board of Zoning Appeals met in session with the following in attendance; Dan Adams, President; Barry McManaway, Vice President; Leigh Marshall, Secretary; Dan Osborn, JD Uebler and, by invitation, Culver town attorney, Jim Clevenger (through Microsoft Teams). Town Manager Jonathan Leist was also present.

Mr. Adams asked that the meeting begin “out of order” due to the receipt of a letter from Gregory and Alyssa Burns’ attorney, Kevin Tankersley, 1600 South US Highway 35, P.O. Box 363, Winamac, IN, 46996. The letter was emailed to the BZA and interested parties 3 hours before the scheduled meeting. A copy of the letter is attached. Mr. Tankersley joined the meeting through Microsoft Teams. Mr. Clevenger commented that the BZA was able to reconsider a variance if it found there was substantial new information that might affect their decision. The requested variance with its issues is repeated below from the BZA November 2020 minutes:

***2020-016B (2020-B-67354): “A petition filed by Gregory and Alyssa Burns to request a variance of development standard for a north side yard setback of 1 foot from the required 10 feet, a front yard setback of 20 feet from the required 25 feet, and for a maximum impervious surface of 58% from the standard of 50%. The variance requested is for the purpose of constructing an 8 foot by 28 foot front porch in the R-1 district. The address of the property is 311 N. State Street, Culver, IN, 46511, Marshall County Parcel ID #502116304102000014.***

***This petition was heard and passed with a variance of 7 feet rather than 8 feet for the porch, at the October 15, 2020 BZA meeting; however, for the November meeting the Board had requested the presence of the town attorney, Mr. Clevenger to express certain concerns.***

***Mr. Adams explained that the variance had been presented as one that asked for a porch addition yet the entire house (at 311 N. State St.) was torn down a few***

*days after receiving the variance. The Board had not been told the house was to be torn down. Mr. Adams reread the variance request. He also referenced the site plan, which only showed the original house with a porch addition drawn in red.*

*Mr. Clevenger advised that if the Board had been given information that was not correct, it is within its powers to re-address the variance. Mr. DeWitt explained that both the building permit and the tear down had been approved before the BZA meeting. Mr. Adams responded that he was “completely offended” that the Board was never told.*

*Mr. Burns was present and apologized for being misleading, but he felt all he was required to ask for was the porch variance as long as he was building on the same footprint. Mr. McManaway responded that the Board was unable to ask pertinent questions without a full representation of the plans; that the Board had been voting on “something not completely known to us.”*

*Mr. Clevenger said it seemed, had the Board been given more information, it may have turned down the variance. Mr. Burns added that had a porch existed, he would not have needed any variance to build a new house.*

*Mr. Clevenger advised that for the Board to reconsider the variance, it would need to reschedule and rehear the variance. There was a discussion about whether Mr. Burns could continue building the house and Mr. Clevenger advised he would do so “at his own risk.”*

*There was additional confusion regarding the allowable height of the new house. Ordinance #2019-009 had never been updated after having been changed by the Town Council.*

*Both the Plan Commission and the Town Council had considered new language for this ordinance in August and September 2019. The language approved by the Plan Commission was:*

*“Should such non-conforming structure or non-conforming portion of a structure be destroyed by any means, it may be rebuilt upon existing foundation lines, and in accordance with applicable height restrictions of the Zoning Ordinance. A variance of development standards will not be required for an increase of height if the structure is rebuilt upon the existing foundation lines and is under the*

*applicable height restrictions of the zoning ordinance”*

*But the Town Council disagreed, and the language was ultimately changed to:*

*“Should such non-conforming structure or non-conforming portion of a structure be destroyed by any means, it may be rebuilt upon existing foundation lines, provided that the height of the replacement structure may not exceed the height of the structure that was destroyed unless a variance is approved by the Board of Zoning Appeals.”*

*The ordinance was ultimately corrected, but as the incorrect version was in place during the Burns’ petition, they can increase the height of the house they are building.*

*Mr. McManaway (also a Planning Commission member) emphasized that the Planning Commission had neither a site plan nor knowledge about the demolition of the home; that both boards were restricted because of lack of information. Ms. Marshall encouraged Mr. Burns to watch his recorded presentation to the Board as she thought there had been opportunities for Mr. Burns to share that the house was a tear down.*

*Mr. DeWitt added that Mr. Burns would only be coming back to the BZA for a rehearing on the porch and Mr. Uebler encouraged a Motion be made for the reconsideration of the previous variance. Mr. McManaway made the Motion, seconded by Mr. Osborn and it was approved unanimously.*

*The rehearing will take place on December 17, 2020.”*

Mr. Tankersley claimed the ordinance for a rehearing required that an “interested party” request the rehearing. He claimed the BZA had no authority on its own to rehear a variance. Mr. Clevenger countered that Culver’s specific ordinance is usually for the petitioner or the remonstrator, but if the BZA felt misled, it can reconsider a variance. Mr. Tankersley questioned that there actually was anything misleading in the Burns’ presentation. He added that if the presentation was “completely fraudulent” there might be grounds for reconsideration. Mr. Adams repeated that the Burns had misled the BZA in claiming the new porch was on the *existing* house; that there was no reference to the house being torn down.

Mr. Clevenger stated there were two elements that could justify a review of the variance:

- 1) substantially new information
- 2) a finding that the petitioner was misleading in not providing the information to the BZA

Ms. Marshall moved that at the January rehearing “the site plan for the new construction be shared with us including measurements, eave overhangs, drawings in relation to the previous structure and a site plan. Further, that not providing the information was and is detrimental to our decision making process. As a result there are sufficient grounds for reconsidering the variance.”

Mr. Uebler asked what would happen if the Burns did not share any new information with us. Mr. Adams explained that the reconsideration was only for the porch. Mr. Osborn wondered if the new house were actually on the “original footprint” of the torn down property. Mr. DeWitt said a surveyor had verified the footprint. The BZA was not given a copy of the surveyor’s plan.

Mr. Uebler seconded Ms. Marshall’s motion for a rehearing and the motion passed unanimously.

**2020-019B:** A petition filed by Mr. James Easterday on behalf of Andrew and Karen Held to allow construction of an addition to the existing residence with a variance of the rear yard (street side) set back of 12.8 feet from the required 25 feet.

Mr. Easterday, , Easterday, Houin, 212 N. Main St., Culver, IN 46511 was at the meeting and presented. The variance was needed to “fill in” a small porch that would be an extension for a new kitchen.

The variance was passed unanimously.

### **New Business:**

There was no new business.

### **Old Business:**

The issue of food trucks and their regulation was revisited. Mr. DeWitt shared that Marshall County is currently trying to ban the use of shipping containers and semis as storage facilities saying that these cannot be considered “accessory structures”. He thought both issues should be addressed by Culver’s Planning Commission.

### **Citizen Input:**

Mr. Vernon Chmielewski, 517 E. Lakeshore Dr, said his family had been unhappy with the construction at 311 N. State St. as it had blocked the alley used by neighbors to access their houses and they had not been informed this was going to happen.

Mr. Chmielewski also said he was in the festival business and would be happy to share thoughts or offer help regarding food truck regulations.

The meeting adjourned at 7:58PM.

Submitted by Leigh Marshall

---

Dan Adams

---

JD Uebler

---

Leigh Marshall

---

Barry McManaway

---

Dan Osborn