

Culver Board of Zoning Appeals

Minutes: November 19, 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 (through Microsoft Teams), Building Commissioner Chuck DeWitt (through Microsoft Teams) and, by invitation, Culver town attorney, Jim Clevenger (through Microsoft Teams). Town Manager Jonathan Leist was also present.

Mr. Adams had received a letter requesting that an address be corrected in the previous notes. Ms. Emily King is located at 18151 West Shore Circle rather than 1815. This was corrected. A motion to approve the minutes of 10/15/20 was made and seconded. The minutes were approved and signed.

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.

2020-018B: A petition filed by Mr. James Easterday on behalf of Loyal W. Wilson to request variance of development standards to allow construction and rebuilding of an accessory structure with south side yard setback of 2’6” from the required 10’ and height of 17’ from the required 16’ located at 2270 East Shore Lane.

Both Mr. Wilson of 2270 East Shore Lane and Chad Leap, Skyline Builders, 309 S Detroit St, Warsaw, IN 46580 were present through Microsoft Teams. Mr. James Easterday, attorney, Easterday, Houin, 212 N Main St, Culver, IN 46511 was present at the Beach Lodge.

Mr. Easterday explained there were water and mold issues with the existing structure. He said there were no objections by the neighbors to the proposed new structure.

Mr. Leap said the height variance might be necessary to build a slab high enough to alleviate the water issue.

Board members focused on how much the new structure would need to be raised and why the new structure was being expanded from a one bedroom to a two bedroom. Mr. DeWitt expressed an issue with the property lines still needing to be consolidated. The preference expressed by the Board was to have the structure remain the same size and be moved away from the property line to be more compliant. Though Mr. Wilson explained the additional space was needed for his family and grandchildren, Mr. Adams shared the Board had a responsibility to carry out ordinances and Mr. Wilson had additional land on which to rebuild an accessory structure that could be fully compliant

Mr. Easterday asked that the variance be tabled until December.

New Business:

There was no new business.

Old Business:

Mr. Uebler expressed concern that his votes were being recognized as he had been unable to sign the findings of fact in person during the pandemic. He had signed the findings of fact at home. He was assured his votes counted as 1) he was being recorded and 2) he would ultimately turn in his signed findings to Town Hall.

The meeting adjourned at 8:17PM.

Submitted by Leigh Marshall

Dan Adams

JD Uebler

Leigh Marshall

Barry McManaway

Dan Osborn