



LITTLE TOWN ON LAKE MAXINKUCKEE

Culver Board of Zoning Appeals 6:30 p.m., Thursday, April 15, 2021

The meeting will take place at Culver Town Hall, 200 East Washington, Culver

[Click here to join the meeting](#)

Or call 1 574-221-6909 and use conference ID 177629124#

1. Pledge of Allegiance
2. Roll Call
3. Approval of April 1, 2021 minutes
4. Petitions:

2021-008B: A petition filed by James E. Easterday, attorney on behalf of Michael Madison and Mary Catherine McBride, to approve a variance of development standards to allow construction of a residence with East side yard setback of 6'6" and front yard setback of 0' (if required) from the ordinance requirements of 15' and 25'. The address of the property is 1059 West Shore Drive, Culver, Indiana 46511.

2021-009B: A petition filed by Gilbert and Sarah Standley for the property located at 201 N. Ohio Street, Culver, Indiana, 46511, Marshall County Parcel ID 50-21-17-404-089-000-014 to request a variance of development standards for a rear yard and side yard setbacks. The existing garage will be torn down and replaced with a larger attached garage, approximately 168 square feet larger with a storage room above the garage.

2021-010B: A petition filed by Gary and Carolyn Craig, 344 West Shore Drive, Culver, Indiana 46511, Marshall County Parcel ID 50-21-28-000-069-000-013 to request a variance of developmental standards for the installation of a 7-foot fence on the North and South sides of the property as well as along West Shore Drive. The fence will go to the water's edge and will go out to within 4 feet from the edge of the road. Also requesting a privacy fence.

2021-011B: A petition filed by Gregory and Alyssa Burns for the property located at 311 N. State Street, Culver, Indiana 46511, Marshall County Parcel ID 50-21-16-304-102-000-014 to request a variance of development standards for the height of the new home from the required height of 35 feet to 35' 8" or 36' 8". The exact height and variance request to be determined by the Building Commissioner after establishing the natural grade.

5. Old Business
6. New Business
7. Building Commissioners Report
8. New meeting if necessary – May 20, 2021
9. Adjourn

BZA Members

Dan Adams, President * Leigh Marshall, Secretary * Barry McManaway * Dan Osborn * John Uebler

NOTICE OF HEARING

PETITION NO.	
Local Case #	<u>2021-008B</u>
Case #	<u>2021-B-73859</u>
DATE OF HEARING	<u>April 15, 2021</u>
TIME OF HEARING	<u>6:30 P.M.</u>

PLEASE TAKE NOTICE:

That a petition has been filed by Mr. James E. Easterday, Attorney on behalf of Michael Madison and Mary Catherine McBride, to approve variance of development standards to allow construction of a residence with East side yard setback of 6 '6" and front yard setback of 0' ft.(if required) from ordinance requirements of 15 ft and 25 ft. The address of the property is 1059 W. Shore Dr, Culver, Indiana 46511. The Legal description is: A part of Section 21, all in Township 32 North, Range 1 East, Marshall County, Indiana described as follows: Commencing at a 5/8 inch iron rod at the Northeast corner of Lot No. 1 Behmer's Subdivision; thence South 4 Degrees 44 minutes, 44 seconds West 164.79 feet to a 5/8" iron rod at the Southeast corner of said Lot No. 1, being the point of beginning; thence continuing South 4 degrees 49 minutes 57 seconds West 100.06 feet to a 1/2" iron rod; thence North 67 degrees, 01 minutes 49 seconds West 143.79 feet to a 5/8" iron rod on the Easterly line of the James W. Watkins and Diane L. Watkins parcel as recorded in Instrument No. 9905733, Office of the Marshall County Recorder; thence North 24 degrees 07 minutes 21 seconds East along said Easterly line of the Watkins parcel a distance of 109.96 feet; thence South 67 degrees, 01 minutes 49 seconds East to the point of beginning

A hearing upon this petition will be held in the Municipal Building, 200 East Washington Street, Culver, Indiana, at which time, you may appear either in person, present in writing, be represented by agent, or by attorney, and present any reasons which you may have to the granting or denying of this petition.

Copy of this notice has been sent to the petitioner and to the owners of property affected by the petition.

You are requested to prepare your case, in detail, and present all evidence relating to this petition at the time of the scheduled hearing.

Due to COVID-19 health concerns, all interested parties are encouraged to participate online, provide comment via email, or call in to the meeting. This meeting will allow for electronic and telephone participation via Microsoft Teams, a link and call in number will be available one week prior to the meeting and included in the final agenda. For information on how to view or call into the meeting, please contact the Town Clerk at 842-3140.

Respectfully Submitted,

Chuck DeWitt
 Building Commissioner
 Dated: 3/18/2021

TOWN OF CULVER

574-842-3140

BOARD OF ZONING APPEALS

NOTICE OF HEARING

PETITION NO. 2021-B-008

DATE OF HEARING APRIL 15, 2021

TIME OF HEARING 6:30 PM

PLEASE TAKE NOTICE:

Gary and Carolyn Craig, 344 W. Shore Culver, Indiana, Marshall County, Parcel ID 50-21-28-000-069-000-013 to request a variance of developmental standards for the installation of a seven-foot fence on the North and South sides of the property as well as along West Shore Drive. The fence will go to the water's edge and will go out to within 4 feet from the roads edge. Also requesting a complete privacy fence.

A hearing on this petition will be held in the Culver Town Hall, 200 East Washington St., Culver, Indiana, at which time you may appear either in person, present in writing, be represented by agent, or by attorney, and present and reason which you may have to the granting or denying of this petition. You are requested to prepare your case, in detail, and present all evidence relating to this petition at the time of the scheduled hearing.

Due to COVID-19 health concerns, it is anticipated that interested parties will be allowed to participate online, provide comment via email, or call in to the meeting. This meeting will allow for electronic participation via Microsoft Teams, a link and call-in number will be available a week prior to the meeting and included in the final agenda. For information on how to view or call into the meeting, please contact Town Hall at 842-3140.

Respectfully,
Chuck DeWitt
Building Commissioner

TOWN OF CULVER

574-842-3140

BOARD OF ZONING APPEALS

NOTICE OF HEARING

PETITION NO. 2021-B-009

DATE OF HEARING APRIL 15, 2021

TIME OF HEARING 6:30 PM

PLEASE TAKE NOTICE:

Gilbert and Sarah Standley, for the property located at 201 N. Ohio St., Culver, Indiana, Marshall County Parcel ID 50-21-17-404-089-000-014 to request a variance of developmental standards for a rear yard and front yard setbacks. The existing garage will be torn down and replaced with a larger attached garage, approximately 168 square feet larger with a storage room above the garage.

A hearing on this petition will be held in the Culver Town Hall, 200 East Washington St., Culver, Indiana, at which time you may appear either in person, present in writing, be represented by agent, or by attorney, and present and reason which you may have to the granting or denying of this petition. You are requested to prepare your case, in detail, and present all evidence relating to this petition at the time of the scheduled hearing.

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Respectfully,
Chuck DeWitt
Building Commissioner

TOWN OF CULVER

574-842-3140

BOARD OF ZONING APPEALS

NOTICE OF HEARING

PETITION NO. 2021-B-011

DATE OF HEARING APRIL 15, 2021

TIME OF HEARING 6:30 PM

PLEASE TAKE NOTICE:

Gregory and Alyssa Burns H/W for the property located at 311 N. State St., Culver, Indiana, Marshall County Parcel ID 50-21-16-304-102-000-014 to request a variance of development standards for the height of the new home from the required maximum height of 35 feet to 35 feet 8 inches or to 36 feet 8 inches. The exact height and variance request to be determined by the Building Commissioner after establishing the natural grade.

A hearing on this petition will be held in the Culver Town Hall, 200 East Washington St., Culver, Indiana, at which time you may appear either in person, present in writing, be represented by agent, or by attorney, and present any reason which you may have to the granting or denying of this petition. You are requested to prepare your case, in detail, and present all evidence relating to this petition at the time of the scheduled hearing.

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Respectfully,
Chuck DeWitt
Building Commissioner

Culver Board of Zoning Appeals

Minutes: April 15, 2021

Due to the Covid-19 restrictions, the Culver Board of Zoning Appeals met in the Culver Town Hall and allowed 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, and Building Commissioner Chuck DeWitt. JD Uebler was absent. Ms. Janette Surrisi, Wyland, Humphrey, Clevenger and Surrisi, 319 West Jefferson, Plymouth, Indiana, 46563 also attended as attorney for the town of Culver.

A motion was made to approve the Special Meeting minutes of 4/1/21. Ms. Marshall shared that both Mr. Uebler and Mr. McManaway had requested corrections to the minutes, she had made those corrections, resent the minutes and offered the corrected minutes for approval.

The minutes were approved and signed.

2021-008B: A petition filed by James E. Easterday, attorney on behalf of Michael Madison and Mary Catherine McBride to approve a variance of development standards to allow construction of a residence with east side yard setback of 6'6" and front yard setback of 0' (if required) from the ordinance requirements of 15' and 25'. The address of the property is 1059 West Shore Drive, Culver, Indiana 46511.

Jim Easterday, Easterday, Houin, 212 N. Main St. Culver, Indiana, 46511 was at Town Hall and presented the petition. He explained that the property was two parcels with one parcel in the Township and one in Culver. He said the parcels are one zoning lot. He added the County Assessor does not want a new house in two different taxing districts.

Mr. McManaway suggested the two parcels be combined.

Former Building Commissioner, Russ Mason, 530 Forest Place, Culver, Indiana, 46511, joined on line and said Culver had an agreement with Marshall County that the larger parcel determined which entity became the taxing district and the Culver parcel was larger. He also recommended the two parcels be combined. Mr. Easterday responded that the County Assessor will not accept a building permit unless the new house is moved to one property or the other. Co-owner, Mary

Catherine McBride, was at Town Hall and added the properties next to her are split as well and that only the properties further west of her are cleanly in one district.

Mr. Easterday read the definition of a zoning lot which was defined as a lot "under single ownership or control" and that is how this property would be used. He said he would file an affidavit to say his client would agree to never sell the front parcel.

Mr. Mason said GIS does not show his property as a single zoning lot.

Mr. McManaway asked what would keep the owners from building another residence on the additional parcel. Mr. DeWitt replied "Nothing." Mr. DeWitt also said this was an Assessor problem and should not affect how Culver decides what is best for Culver. Mr. Easterday offered a deed restriction as a possible solution.

Mr. Adams also expressed concern about setbacks and why they could not be more compliant. Mr. Easterday said the design was based on an architect's recommendations.

After further discussion, the Board felt it would need more information to make a decision. It voted unanimously to table the petition until Mr. Easterday could bring the Board additional details on a potential deed restriction and the wishes of the County Assessor.

2021-009B: A petition filed by Gilbert and Sarah Standley for the property located at 201 North Ohio Street, Culver, Indiana, 46511, Marshall County Parcel ID 50-21-17-404-089-000-014 to request a variance of development standards for rear yard and side yard setbacks. The existing garage will be torn down and replaced with a larger attached garage approximately 168 square feet larger with a storage room above the garage.

Mr. Gilbert Standley was at Town Hall and presented the petition. Mr. Standley explained that his attached garage was leaking and rotting. He proposed tearing down the existing attached garage and building a new one. The new garage would be just under the height of the house

Mr. McManaway said the garage was already non-conforming so the only variance actually required was the new height. Mr. Standley was only slightly extending the garage, without increasing non-conformity of the setbacks, and was also not increasing the impervious portion of the lot. Mr. DeWitt agreed.

The variance was passed unanimously.

2021-010B: A petition filed by Gary and Carolyn Craig, 344 West Shore Drive, Culver, Indiana, 46511, Marshall County Parcel ID 50-21-28-000-069-000-013 to request a variance of development standards for the installation of a 7 foot fence on

the north and south sides of the property as well as along West Shore Drive. The fence will go to the water's edge and will go out to within four feet from the edge of the road. Also requesting a privacy fence.

Both Mr. and Mrs. Craig attended the meeting at Town Hall. Mr. Craig presented.

Mr. Craig explained they needed a privacy fence as the house is close to the road, the passing cars splash water and dirt on it, and the road is dangerous. He also shared the neighbors currently have a 6' fence and they would like to match that fence. This request changed the request from their petition from 7' to 6'.

Two Town Council members, Sally Ricciardi and Bill Cleavenger were at the hearing. Ms Ricciardi expressed concern that the fence be no closer than 5' to the lake. Mr. Cleavenger expressed concern that first responders could have trouble accessing the property. Ms. Marshall added she had done research earlier regarding the DNR's requirements and agreed with Ms. Ricciardi that the DNR did prevent fences running to the water's edge.

Ms. Surrisi told the Craigs that lake waters are controlled by the state under the public trust doctrine thus the public is to have access and visibility around the lake. She corrected Ms. Ricciardi and said the fence setback is 10 feet from the lake and the Craigs would need a permit from the DNR to change that.

Mr. DeWitt did agree that the road is in bad shape but said Marshall County owns it and is putting in catch basins to address the water problem. He said Culver is also putting in a new road on the west side and the County will meet that road. Mr. DeWitt said the Craigs originally had a fence but tore it down due to construction. If they had not removed the fence, they would not need a variance. He also recused himself from further discussion as he has known the Craigs personally for many years.

The Craigs confirmed they would put 126' of fence on the "road side" of the house and they would go "as far as we could" toward the lake. Ms. Craig said the main yard was at the side of the house and thus, they had no privacy from neighbors or people on the road.

Ms. Stephanie Peric tried to participate on line but was unable to connect. Her email in support of part of the fence is attached to these minutes.

The Board informed the Craigs they would need to pursue a permit from the DNR for part of their fence and, if desired, to return to BZA. Mr. Craig withdrew his petition.

2021-011B: A petition filed by Gregory and Alyssa Burns for the property located at 311 N. State St, Culver, Indiana, 46511, Marshall County Parcel ID 50-21-16-304-102-000-014 to request a variance of development standards for the height of the new home from the required height of 35 feet to 35'8" or 36'8". The exact height and

variance requested to be determined by the Building Commissioner after establishing the natural grade.

Mr. Erik Larsen, Larsen Jolly Construction, 308 College Avenue, Culver, Indiana, 46551 and owner, Greg Burns were both at Town Hall and presented the variance. Mr. Larsen explained the 8" overage in height was due to a mistake made in where height was measured. He stated the height was measured from the top of the foundation.

Mr. DeWitt explained the house is actually 1 foot 2 ½ inches taller than 35 feet. He said when the house was measured there was no grade established. The "original grade" is supposed to be determined by the builder, however, when done after the fact, the corners are measured and an average is used. Mr. DeWitt added that it did not matter if the County inspector passed the foundation as the inspector has nothing to do with zoning.

Mr. Larsen claimed there was a hardship as the roof would have to be altered. Mr. McManaway responded there was no hardship because Mr. Larsen had made a mistake and the BZA does not "correct mistakes". Mr. McManaway also said that he had asked Mr. Burns to clarify the roof structure in previous BZA meetings.

Mr. Larsen said the grade had to be "brought up" to run water away from the house. Mr. Burns said that grade had never been clearly defined by the BZA. Mr. Adams responded this is not the BZA's job.

Ms. Surrisi also asked Mr. Burns why his hardship was not self-imposed. Mr. Burns responded it was not self-imposed because he hired a contractor.

Mr. Adams said there had been misunderstandings and the one variance granted for the porch on this property had been reversed. He added that Mr. Burns knew an incorrect permit had been granted, that the height issue was a mistake, and he felt it was in poor taste to go to the maximum height. He also said the BZA was not given full plans. Mr. Burns confirmed the BZA was not given plans and had to ask for them. Mr. Adams said the whole process had been handled poorly and put BZA in some bad positions.

Mr. McManaway asked if there was a stop work order on the roof.

Mr. Burns responded that Mr. DeWitt had told him he could continue working on the house and he appreciated being told he could continue.

Mr. DeWitt explained he had given Mr. Burns and Mr. Larsen permission to "weather in" the roof to protect the interior. He even told Mr. Larsen not to put shingles on, but Mr. Larsen claimed he was told "that's on you if you put shingles on" and this was interpreted by Mr. Larsen to mean he could continue construction on the roof.

Ms. Marshall confirmed she had been on site when Mr. DeWitt relayed the "weather

in” instructions and that Mr. DeWitt had said any risk is self-created if work continued. Mr. DeWitt said a tarp over the top would have weathered it in. He added an engineer will likely have to be involved going forward to let us know how the roof will be changed.

Mr. McManaway told the petitioner and Mr. Larsen that they had to meet state code, and that Culver would not set a precedent that could be “intolerable.” He also said citizen input had expressed concern about the house as they do not want the BZA to allow something that everyone would not be allowed to do. He said there is a process and it is all in writing.

Mr. Adams asked Ms. Marshall to read eight letters regarding the property that had been sent to Town Council and the BZA. Those letters, including a ninth email regarding petition 2021-010B that came after the meeting, are attached to these minutes.

Mr. McManaway said he appreciated citizen letters and he appreciated the Burns being a new family in Culver but he wants Culver to maintain a standard and not allow a variance for one family that would not be allowed for another.

Mr. Adams said the comments in some of the citizen letters were harsh given BZA is a volunteer group that does the best it can. He said his biggest issue was that the Burns were given a height variance by mistake in their request for a building permit and they had “pushed it to the limit.” Mr. Adams said he thought this had made a “touchy situation even touchier.”

Mr. Burns said he was surprised when he learned their design did not meet the height limits.

Mr. Wade McGee, Collins & Co. Realtors, 232 S. Main St., Culver, IN, 46511 said he had written one of the letters and said he appreciates what BZA does. He said the BZA does not make decisions based on precedent. He said granting the height variance to the Burns would not create a precedent.

Mr. Vern Chmielewski, 517 East Lake Shore Dr., Culver, IN, 46511, apologized for his letter if it offended, but felt he had to address what he saw as the “recurrence” of issues at the house especially as his parents live next door. He wanted to share their unhappiness.

Gil Standley, 201 North Ohio Street, Culver, Indiana, 46511, added that sometimes people get hurt, but there are rules for a reason. He said people are helped who have an actual hardship, but not if the hardship is self created.

Mr. Larsen told the Board the house could potentially lose its “character” by redesigning the roof. There was some discussion as to a best approach. Mr. McManaway confirmed the grade could not be “adjusted after the fact” or Culver would have people building large structures and moving dirt around.

Mr. Tom Yuhas, 430 State St., Culver, IN, 46511, shared that "it all comes down to grade" and asked if perhaps that should be determined at the time a permit is issued. Mr. DeWitt responded that this is not the burden of the BZA, but the burden of the builder. Mr. McManaway agreed with and confirmed this. He said this is the reason the ordinances exist and it is the responsibility of the builder. Mr. DeWitt read the ordinance multiple times. The ordinance required the establishment of grade by the builder before the tear down of a house and the building of a new house.

The Board voted unanimously to deny the variance. Ms. Surrisi formally served Mr. Burns with a "stop work" order and informed him he had fifteen days to submit a suitable agreement for remediation or Culver can take him to litigation.

Mr. Burns said the BZA had given him negative feedback from the neighbors about his house and he wanted to do the same for the BZA. He shared that three people had told him the BZA was excited about "sticking it to them". Ms. Surrisi asked if he would like to make the complaint a formal part of the record by sharing details. Mr. Burns declined. Mr. McManaway said he respects every member of the BZA. They are people who volunteer their time for meetings that are routinely three to three and a half hours.

Old Business

Mr. Robert Schmidt, 1010 West Shore Dr., Culver, IN, 46511, asked the BZA if his expired variance from 2019 could be re-approved. The variance expired in August 2020. Ms. Surrisi shared that in civil court procedure 1) Mr. Schmidt needed to have applied for a building permit and 2) Mr. Schmidt would need to ask for an extension "for good cause" before that extension ended and for "extenuating circumstances" after it ended. The BZA ordinances were at best ambiguous about an expired variance and thus, Ms. Surrisi felt there was nothing the BZA could do to extend the expired variance.

Though it was agreed the pandemic was an extenuating circumstance, Mr. Schmidt had never obtained a building permit. He agreed to reapply for the variance at the May BZA meeting.

Mr. DeWitt shared that 415 Lakeshore will be coming up for auction again in June 2021.

New Business

Mr. Dewitt said five cases were set for the BZA hearing in May.

1) Beachview Properties is a vacant lot on the west shore by the cemetery. They are planning to construct storage units on the property. They have applied to the town to be annexed in.

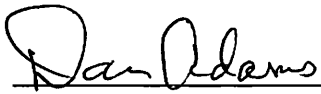
- 2) Mr. Easterday will be representing the Dinsmore property at 50 West Shore Drive
- 3) The Wagner property at 2520 East Shore Lane
- 4) Max's Playhouse is planning an addition.
- 5) Robert Schmidt will ask to renew his variance from 2019

Building Commissioner's Report

Mr. Dewitt explained there were currently two different ordinances published on line and he was working to correct not only that issue, but will also be distributing new ordinance books to all members of the BZA to ensure everyone has the latest information.

Meeting adjourned at 9:42PM.

Submitted by Leigh Marshall



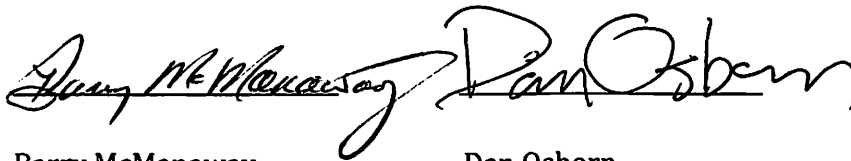
Dan Adams



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