

BOARD OF ADJUSTMENT

The Board of Adjustment meeting was called to order at 5:30 p.m. by Chairman Cullinan.

Roll Call: Present: Robinson, Muth, Verdoorn, Cullinan
Absent: Sissel

Motion by Robinson, second by Verdoorn, to approve the agenda. All ayes.

Motion by Robinson, second by Muth, to approve the minutes of the 6/16/09 meeting. All ayes.

Cullinan read the following appeal: **Terry & Sue Kiewiet, 2101 S Lakeview Drive, Clear Lake, IA**, request permission to construct a new dwelling. PERMISSION DENIED: The Clear Lake Code of Ordinances Chapter 165.17 – Lake Residential. 4. Dimensional Requirements. Front Yard depth: building line closest to lakeshore, Side Yard: least depth on any one side – 5 feet or 10% of lot width. Proposed construction will not meet these requirements.

Scott Flory, City Administrator reviewed the Kiewiet's proposal to demolish the existing dwelling on their property, and build a new home on the lot. The lot is 60' wide, which requires that there be a 6' setback on both the north and south side-yards. The Kiewiet's were requested a variance of 1' on both the north and south, resulting in a 5' setback on both sides. Their existing residence is 15' from the current seawall, which is presumed to be the lakeside property line. The Kiewiet's wish to rebuild using the same front-yard (lakeside) footprint as their current dwelling. However, since they are demolishing the existing structure, Code requires that the proposed new construction be no closer to the lakeshore than the current setback of adjoining property that is closest to the lake, which in this case is the property to the north, which is set back 9' farther than the 15' requested by the Kiewiet's. The rear-yard (street side) setback, which ranges from 5' on the south to 8' on the north and is aligned with all neighboring properties, except the adjoining property to the north which is set back farther, would also remain the same. Signatures had been obtained from abutting property owners giving their consent to the Kiewiet's encroachment.

Mr. Kiewiet stated that when he bought the property, he thought he could rebuild to the same lakeshore line as the existing house. He had not checked, nor had his realtor advised him to check, the building codes prior to purchasing the property. It was speculated that the original house and remodels predated the current building codes, which is why the front yard is non-conforming. The overall plan for the new dwelling calls for it to be a 78' x 50', one story, handicap accessible structure, with no basement. Eaves will provide drainage to the south.

Robinson stated she had spoken with the Clear Lake Fire Chief regarding the side-yard variances, and was told that he was against the granting of side -yard variances between lakeshore properties because it is becoming increasingly more difficult to get men and equipment in such small spaces. The Clear Lake Fire Department does not have a ladder truck to fight fires from above, so they must be able to get between the properties if a fire were to break out. Therefore, Robinson said she would not vote for the side-yard variances.

Verdoorn brought up a past decision by the Board of Adjustment, in which a variance had been granted for a lakeshore property and a neighboring property owner subsequently filed a lawsuit. He questioned the Board members' and City's liability when deciding whether or not to grant similar variances. City Legal Counsel Biebesheimer said that if someone were to challenge a decision of this Board, it would be up to Board members to show a good and valid reason for granting a variance. He noted that in the case of the referenced lawsuit, it was found that the homeowner did not build according to the plans presented both to neighboring property owners when they were asked for signatures approving of the homeowner's variance request, and to the Board of Adjustment, which granted the variance based on the plan.

Muth asked if the Kiewiets could leave the west (lakeshore) wall of the current residence standing and rebuild the new home around it, which would mean they would not need to request a front -ard variance. Robinson said she had posed that question to Building Official John Marino, who stated that such action could not be taken to circumvent the Code.

Robinson questioned the need for a rear-yard (street side) variance, noting the Variance Application stated there would be a 25' setback, but on the drawings submitted, the house would only be 5' from the City right-of-way line on the south and 8' on the north, which does not conform to Code. Mr. Kiewiet clarified that the 25' measurement was from the east wall of the house to the street. Flory said Marino had told him that would be acceptable because the Kiewiet's house would be no closer to the street than all the neighboring properties, with the exception of the abutting property to the north. Biebesheimer had a 1988 copy of a survey of the Kiewiet's property, which pre-dated the adoption of the current zoning codes, showing the same 5'-8' setback. He said that the City has granted street side right-of-way encroachment to property owners with the understanding that they are responsible for any repairs should the City need to do work in that right-of-way. Both Biebesheimer and Flory expressed the opinion that there would be no problem on the street side setback since the Kiewiets were building no closer to the right-of-way than other property owners.

Verdoorn asked for clarification on the location of the deck on the existing house and was told it extends out to the top of the seawall. Mr. Kiewiet stated that the deck and seawall would also be removed during demolition and replaced with a brick paver patio extending out to a new seawall. Verdoorn and Cullinan expressed concern over continued lakeside property encroachments that block the general public from enjoying the lake. Verdoorn said he would rather compromise on the side-yard variance than allow the front-yard variance, however he was not really in favor of allowing the side-yard variance due to fire safety concerns. Mr. Kiewiet stated he did not think the Code was fair to lakeshore property owners since the larger the lot, the larger the required side-yard setback.

Verdoorn then asked for clarification on the Variance Application question as to what hardship the Kiewiets would endure if the variances were not granted. Mr. Kiewiet responded that it would mean he and his wife could not build the handicap accessible house they had designed. Biebesheimer stated the Iowa Supreme Court has a very strict definition of hardship as it applies to the granting of variances, defining it as "almost no possible economic recovery". Verdoorn then responded that, using the Court's definition, he did not think the Kiewiets would face a hardship if the variances were not granted because lakeshore property is always in high demand and holds its resale value very well.

Muth asked what the difference in the hardship would be between building a 48' or 50' wide house. He felt it would be more of a hardship to ask the Kiewiets to bring the front-yard setback in 9'. He noted that this Board does not like to grant multiple variances and asked Mr. Kiewiet if he was willing to give up one of the variance requests. Mr. Kiewiet responded that he would rather compromise by giving up the side-yard variances.

Motion by Muth, second by Cullinan, to allow the front-yard (lakeshore) variance if the request for the side-yard variances be dropped. Ayes: Muth, Cullinan. Naves: Verdoorn, Robinson. Motion failed.

Moved by Muth, second by Robinson that the meeting be adjourned at 6:05 p.m. All ayes.

Tina Cullinan, Vice-Chairman

ATTEST:

Sharon Springer, Secretary