

**Town of Cedar Lake-Board of Zoning Appeals
Public Meeting Minutes
January 20, 2011**

The Cedar Lake Board of Zoning Appeals held their Public Meeting on Thursday, January 20, 2011. The meeting was called to order at approximately 7:03 p.m. at the Cedar Lake Town Hall. Those Members present were: Jeremy Kuiper, Tim Kubiak, and Jeff Bunge, Vice-Chairman. Also present were Tim Kuiper, Attorney from Austgen, Kuiper & Associates; Ian Nicolini, Town Administrator; and Laurie Wyrick, Recording Secretary. Eric Burnham, Member, and Ray Nield, Chairman, were not present at tonight's meeting.

Minutes: Jeremy Kuiper moved to approve the Minutes from the December 16, 2010, Public Meeting. Tim Kubiak seconded. After a voice vote the motion carried unanimously.

Election of Officers: Jeremy Kuiper moved to defer the election of officers of Chairman and Vice Chairman to the February meeting. Tim Kubiak seconded. After a voice vote, the motion carried unanimously.

Retention of Legal Services: Jeremy Kuiper moved to retain the legal services of Austgen, Kuiper and Associates. Tim Kubiak seconded. After a voice vote, the motion carried unanimously.

Public Hearings:

Old Business:

1. Carey – Variance of Use

Owner/Petitioner: David & Debra Carey, 12681 W. 87th Avenue, St. John, IN

Vicinity: 14501 Morse Street

Request: Petitioner is requesting a Variance from Zoning Ordinance 496, to allow an accessory structure for a business not located on the same lot. This lot has been approved as an accessory parking lot for the business

Deferred from the August 19, 2010 Public Meeting.

Deferred from the September 16th Public Meeting.

Deferred from the October 21st Public Meeting.

Deferred from the November 18th Public Meeting.

Deferred from the December 16th Public Meeting.

- (1) Town Attorney Comments: Tim Kuiper stated that this Item and Item #2 can be combined as the Petitioner has requested deferral of both Items.
- (2) Petitioner's Response: E-mail dated December 29, 2010 requesting deferral to the February Meeting.
- (3) Remonstrators: None
- (4) Town Administrator's Comments: None
- (5) Board's Discussion: None.
- (6) Board's Decision: Tim Kubiak moved to defer this Item and Item #2 to the February meeting. Jeremy Kuiper seconded. After a voice vote, the motion carried unanimously.

2. Carey – Variance of Use

Owner/Petitioner: David & Debra Carey, 12681 W. 87th Avenue, St. John, IN

Vicinity: 14501 Morse Street

Request: Petitioner is requesting A Variance from Zoning Ordinance 496, Title XXIII – Accessory Regulations. Section 1: General Accessory Regulations: B. "Accessory building intended for business or industrial purposes and located in Business or Industrial Zoning Districts shall be allowed, provided that they conform to all height, setback, yard and lot coverage requirements of the Zoning District in which they are located. There are no specific limits concerning the size or number of such structures in this Zoning Ordinance, as amended from time to time."

This Developmental Variance is to allow a front yard setback of ten (10) feet, and a side yard setback of eight (8) feet, the accessory structure will be located in the front yard as no primary structure is on the lot.

Deferred from the August 19, 2010 Public Meeting.

Deferred from the September 16th Public Meeting.

Deferred from the October 21st Public Meeting.

Deferred from the November 18th Public Meeting.

Deferred from the December 16th Public Meeting.

- (1) Town Attorney to Review Legals: See Item #1.
- (2) Board's Decision: See Item #1.

New Business

3. Bourrell – Developmental Variance

Owner/Petitioner: George Bourrell, P.O. Box 513, Cedar Lake, IN

Vicinity: 8519 W. 132nd Place

Request: Petitioner is requesting a Variance from Zoning Ordinance 496, Title VIII – Residential (R-2) Zoning District. Section 4: Width, Area and Yard Regulations: C. Side Yard. "On each lot, except as otherwise specified, there shall be two (2) side yards, each having a width of not less than eight (8) feet..."

This variance request is to allow a side yard setback of one (1) foot.

Petitioner is requesting a Variance from Zoning Ordinance 496, Title VIII – Residential (R-2) Zoning District. Section 4: Width, Area and Yard Regulations: B. Front Yard. "There shall be a front yard between the building line and highway and street right-of-way as follows:"..."4) On all other streets, a distance of thirty (30) feet;"

This variance request is to allow a front yard setback of six (6) feet.

Petitioner is requesting a Variance from Zoning Ordinance 496, Title VIII – Residential (R-2) Zoning District. Section 4: Width, Area and Yard Regulations: E. Building Coverage: "Not more than twenty-five percent (25%) of the area of the lot may be covered by buildings and/or structures."

This variance request is to allow building coverage of twenty-seven percent (27%) of the lot.

Petitioner is requesting a Variance from Zoning Ordinance 496, Title VIII – Residential (R-2) Zoning District. Section 4: Width, Area and Yard Regulations: D. Rear Yard. "There shall be a rear yard of not less than twenty-five percent (25%) of the depth of the lot."

This variance request is to allow a rear yard setback of zero (0) feet.

Petitioner is requesting a Variance from Zoning Ordinance 496, Title XXIII – Accessory Regulations. Section 1: A. 2. a. "Said building shall not exceed six hundred (600) square feet on any lot up to ten thousand (10,000) square feet in size.

This variance request is to allow an accessory structure six hundred and fifty (650) square feet in size on a lot nine thousand four hundred and twenty (9,420) square feet in size.

1. Attorney to Review Legals: Tim Kuiper stated that the notifications and publications are in order for tonight's public hearing.
2. Petitioner's Response: George Bourrell stated that plans are to add a second story to the house. Mr. Bourrell is planning to expand the attached accessory structure on the property.
3. Remonstrators: None
4. Building Department's Comments: Ian Nicolini stated that the existing home is legal non-conforming in its setbacks and the non-conformity will not be increased as the Petitioner is planning to build within the current setbacks.
5. Board's Discussion: Tim Kubiak stated that the Petitioner will be improving the existing site and not increasing the non-conformity of the current setbacks for the property. Jeff Bunge stated concerns about out of doors parking with the improvements. Mr. Bourrell responded that the parking would be along the side of the property and not on the street. Mr. Bourrell showed on the site where the outside parking would be located on the site to the Members.
6. Board's Decision: Tim Kubiak moved to approve the variances as presented, to include the Findings of Fact:

- The approval will not be injurious to the public health, safety, morals and general welfare of the community;
- The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner; and
- The strict application of the terms of the Zoning Ordinance, as amended from time to time, will result in practical difficulties in the use of the property.

Jeremy Kuiper seconded. After a roll call vote, the motion carried by a vote of 3 to 0.

4. Latitude 41 – Special Use Variance

Owner: US 41 Properties, Inc., 13019 Wicker Avenue, Cedar Lake, Indiana

Petitioner: Latitude 41, 13019 Wicker Avenue, Cedar Lake, Indiana

Vicinity: 13019 Wicker Avenue

Request: Petitioner is requesting a Special Use Variance to allow live entertainment and dancing for a restaurant/tavern in a Community Business (B-2) Zoning District. Restaurants and Taverns are a permitted use according to Zoning Ordinance No. 496, TITLE XIII, Section 2: Use Regulations: “52) Restaurants, taverns or other places serving food or beverage, when no entertainment or dancing is provided;”

1. Attorney to Review Legals: Tim Kuiper stated that the notifications and publications are in order for tonight’s public hearing.
2. Petitioner’s Response: Paul Banter was present representing Latitude 41. Mr. Banter stated plans to open an upscale restaurant that does serve alcohol and to allow live entertainment such as violin or guitar and the occasional disc jockey with dancing.
3. Remonstrators: None.
4. Building Department’s Comments: Ian Nicolini stated that the restaurant would generate jobs and is in the Tax Increment Financing District and that the location is not close to residents.
5. Board’s Discussion: Tim Kubiak questioned the hours of operation for the business and outdoor dining at the location. Mr. Banter responded that the business is planned to be open from 11:00 a.m. to midnight; however, that may increase depending on the needs of the business. Tim Kubiak stated that the Board of Zoning Appeals will add a time of operation restriction on a Recommendation but as residents will not be affected by the business, time restrictions do not need to be added to the decision.
6. Board’s Recommendation to Town Council: Tim Kubiak moved to send a Favorable Recommendation to the Town Council to allow live entertainment and dancing in a Community Business (B-2) Zoning District lot as presented, to include the Findings of Fact:
 - The establishment, maintenance or operation of the Special Use or Special Exception will not be detrimental to or endanger the public health, safety, comfort, morals or general welfare, and is in accordance with the Comprehensive Master Plan of the Town;
 - The Special Exception or Special Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the community;
 - The establishment of the Special Exception or Special Use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the Zoning District;
 - The Special Exception or Special Use shall be required to comply with reasonable time limitations on commencement and duration of Special Exception or Special Use, as well as holder of rights to Special Exception or Special Use;
 - Adequate utilizes, access roads, drainage and/or other necessary facilities will be provided;
 - Adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and
 - The Special Exception or Special Use shall be in all other respects conform to the applicable regulations of the Zoning District in which it is located and the Board of Zoning Appeals and Town Council finds that there is a public necessity for the Special Exception or Special Use. The following listed Special Exceptions may be recommended by the Town Council in the Zoning Districts stated upon the terms and conditions provided for in this Section 2, of TITLE XXX:

Jeremy Kuiper seconded. After a roll call vote, the motion carried by a vote of 3 to 0.

5. BBT Custom Homes – Developmental Variance

Owner/Petitioner: BBT Custom Homes, Inc., 13019 Wicker Avenue, Cedar Lake, Indiana

Vicinity: 9101 W. 128th Court

Request: A Variance from Zoning Ordinance No. 496, TITLE VIII Residential (R-2) Zoning District. Section 4: Area, Width and Yard Regulations: D. Rear yard: “There shall be a rear yard of not less than twenty-five percent (25%) of the depth of the lot or thirty-five (35) feet, whichever is greater.”

This Variance request is to allow a rear yard of twenty-three (23) feet.

1. Attorney to Review Legals: Tim Kuiper stated that the notifications and publications are in order for tonight’s public hearing.
2. Petitioner’s Response: Paul Banter was present representing BBT Custom Homes, Inc. Mr. Banter stated that the lot has a slope to it that presented issues with building the home on the site. The plans are to construct a deck for the rear yard.
3. Remonstrators: None.
4. Building Department’s Comments: None
5. Board’s Discussion: Tim Kubiak stated that the lot is a unique lot and that the variance request is reasonable.
6. Board’s Decision, to include the Findings of Fact: Tim Kubiak moved to approve the developmental variance as presented, to include the Findings of Fact:
 - The approval will not be injurious to the public health, safety, morals and general welfare of the community;
 - The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner; and
 - The strict application of the terms of the Zoning Ordinance, as amended from time to time, will result in practical difficulties in the use of the property.

Tim Kubiak seconded. After a toll call vote, the motion carried by a vote of 3 to 0.

6. Huizenga - Developmental Variance

Owner/Petitioner: Steven & Jann Huizenga, 24015 S. Volbrecht Road, Crete, Illinois

Vicinity: 7622 W. 134th Place

Request: Petitioner is requesting a Variance from Zoning Ordinance 496, Title XXIII – Accessory Regulations. Section 1: General Accessory Regulations: A. 3. “In addition to one (1) accessory building over two hundred (200) square feet per lot, an additional accessory building of two hundred (200) square feet or less shall be allowed. In no case shall there be more than two (2) accessory buildings per lot.”

This variance request is to allow three (3) accessory structures on a lot. One (1) is four hundred and forty-five (445) square feet in size; a second is five hundred and five (505) square feet in size and the third is three hundred and twenty (320) square feet in size.

Request: A Variance from Zoning Ordinance 496, Title VIII – Residential (R-2) Zoning Districts. Section 4: Area, Width and Yard Regulations: D. Rear yard: “There shall be a rear yard of not less than twenty-five percent (25%) of the depth of the lot or thirty-five (35) feet, whichever is greater.”

This variance request is to allow a rear yard of fourteen (14) feet.

1. Attorney to Review Legals: Tim Kuiper stated that the legals and notifications are in order for tonight’s public hearing.
2. Petitioner’s Response: Steven and Jann Huizenga were present at tonight’s meeting. Mr. Huizenga submitted updated plans to build an attached garage to the home and a deck onto the rear of the house. Currently the property has a detached screen room and boat garage, adjacent to the lake, and a garage for vehicles is needed for the property. The deck would be further than fourteen (14) from the water’s edge. Mr.

Huizenga requested that the attached accessory structure increase one (1) foot in width to allow for a standard garage door size instead of a custom sized garage door. Tim Kuiper stated that as the request is to allow three (3) accessory structures all over two hundred (200) square feet in size, the request can be amended as requested by the Petitioner.

3. Remonstrators: Kathleen Caliendo, 7615 W. 134th Place, **for**, stated concerns about the view from Mrs. Caliendo's property with the addition planned. Mrs. Caliendo was satisfied and believed the plans would be an improvement to the site.
4. Building Department's Comments: None.
5. Board's Discussion: The Members discussed the current home on the lot and the plans for the lot as an improvement for the site.
6. Board's Decision: Tim Kubiak moved to approve the rear yard setback and three (3) accessory structures on one (1) lot as presented at tonight's meeting, to include the Findings of Fact:
 - The approval will not be injurious to the public health, safety, morals and general welfare of the community;
 - The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner; and
 - The strict application of the terms of the Zoning Ordinance, as amended from time to time, will result in practical difficulties in the use of the property.

Jeremy Kuiper seconded. After a voice vote, the motion carried by a vote of 3 to 0.

7. Birchall – Developmental Variance

Owner: Leonard DeYoung, 852 White Hawk Drive, Crown Point, Indiana

Petitioner: Brian M. Birchall, 9041 Willow Lane, St. John, Indiana

Vicinity: 14411 Morse Street

Request: A Variance from Zoning Ordinance 496, Title XXVII-Off-Street Parking and Off-Street Loading. Section 4: Off-Street Parking. H. In Yards. "Off-street parking spaces, open to the sky, may be located in any yard, except in front yard and a side yard adjoining a street." Title XII – Neighborhood Business (B-1) Zoning District. Section 5: Area, Width and Yard Regulations: B. Front Yard: 3) "All streets designed as a part of the Federal Aid Urban System, as delineated by the State Highway Commission, a distance of fifty (50) feet."

This variance request is to allow parking within the fifty (50) foot front yard setback on the west side and within the thirty (30) foot front yard setback on the north side yard of the corner lot adjoining the public street.

Petitioner is requesting a Variance from Zoning Ordinance 496, Title XXVII – Off-Street Parking and Off-Street Loading. Section 4: Off-Street Parking. F. Area. "A required off-street parking space shall be a minimum of ten (10) feet in width and twenty (20) feet in length..."

This Variance request is to allow parking spaces nine (9) feet in width and eighteen (18) feet in length.

1. Attorney to Review Legals: Tim Kuiper stated that the legals and notifications are in order for tonight's public hearing. Tim Kuiper recommended that this Item and the next Item be presented and the public hearing at the same time.
2. Petitioner's Response: Leonard DeYoung, owner, and Brian Birchall, petitioner, were both present at tonight's meeting. Mr. Birchall stated a desire to open and auto repair shop in the location with some towing and used vehicle sales. Mr. Birchall stated that the site was an auto repair place that was respectful of the adjacent neighborhood and the auto repair businesses are best suited for the building and lot. No outside storage is planned for the site.
3. Remonstrators: None.

4. Building Department's Comments: Ian Nicolini stated that the nine (9) feet in width and eighteen (18) feet in length is becoming common practice for parking spaces. Ian Nicolini stated that the owner has recently completed improvements to the building. The previous tenant was respectful to the adjacent property owners and neighborhood and recommended that Mr. Birchall be as respectful. This property is located within the Town's Tax Increment Financing district.
5. Board Discussion: Tim Kubiak stated concerns about the number of vehicles on site and neighborhood aesthetics and questioned the nature of the towing business planned for the site. Mr. Birchall responded that limiting the number of vehicles on site and that the tow operator owns the truck and the truck is the operator's mode of transportation to and from work. Jeremy Kuiper stated concerns about the impact to the neighborhood. Mr. DeYoung stated that there are standards in place for the property that need to be met. Mr. Birchall stated that the impact to the property will be less than previously on the property. Jeff Bunge stated concerns about ADA parking. Mr. Birchall responded that the ADA parking is on the site.
6. Board's Decision: Tim Kubiak moved to approve the Developmental Variances as requested, to include the Findings of Fact:
 - The approval will not be injurious to the public health, safety, morals and general welfare of the community;
 - The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner; and
 - The strict application of the terms of the Zoning Ordinance, as amended from time to time, will result in practical difficulties in the use of the property.

Jeremy Kuiper seconded. After a roll call vote, the motion carried by a vote of 3 to 0.

8. Birchall – Variance of Use

Owner: Leonard DeYoung, 852 White Hawk Drive, Crown Point, Indiana

Petitioner: Brian M. Birchall, 9041 Willow Lane, St. John, Indiana

Vicinity: 14411 Morse Street

Request: Petitioner is requesting a Variance from Zoning Ordinance 496, Title XII – Neighborhood Business (B-1) Zoning District. Section 1: Intended Purposes: "The Neighborhood Business (B-1) Zoning District, as hereinafter established, is designed to meet the day-to-day convenience shopping and service needs of persons residing in adjacent residential areas. All business establishments in this Zoning District shall be retail or service establishments dealing directly with customers. All goods produced on the premises shall be sold at retail on this premises where produced."

This Variance of Use request is to allow vehicle repair, towing and sales of used vehicles on a lot in a Neighborhood Business (B-1) Zoning District.

Petitioner is requesting a Variance from Zoning Ordinance 496, Title XX – Supplementary Zoning District Regulations. Section 9: Principal Structure/Use Limitations: "There shall not be more than one (1) principal structure permitted on a single lot in any Zoning District. There shall not be more than one (1) principal use per single lot in any Zoning District."

This variance request is to allow the sale of used vehicles and towing on a lot with a business of vehicle repair.

1. Attorney to Review Legals: See Item #7.
2. Remonstrators: See Item #7.
3. Board's Recommendation to the Town Council: Tim Kubiak moved to send a Favorable Recommendation to the Town Council for the Variances of Use as presented contingent that no more than four (4) vehicles for repair and six (6) vehicles for sale be on the property at any given time, to include the Findings of Fact:
 - The approval will not be injurious to the public health, safety, morals and general welfare of the community;

- The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner;
- The need for the Variance arises from some condition peculiar to the property involved;
- The strict application of the terms of the Zoning Ordinance, as amended from time to time, will constitute an unnecessary hardship if applied to the property for which the Variance is sought; and
- The approval does not interfere substantially with the Comprehensive Master Plan of the Town.

Jeremy Kuiper seconded. After a voice vote, the motion carried by a vote of 3 to 0.

Correspondence: None.

Public Comment: None.

Adjournment: 7:55 p.m. Jeff Bunge adjourned the meeting.

Press Session: None

Jeremy Kuiper

Tim Kubiak

Eric Burnham

Jeff Bunge, Vice Chairman

Ray Nield, Chairman

Attest: _____
Laurie Wyrick, Recording Secretary