

**Town of Cedar Lake-Board of Zoning Appeals
Public Meeting Minutes
February 17, 2011**

The Cedar Lake Board of Zoning Appeals held their Public Meeting on Thursday, February 17, 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, Eric Burnham, Tim Kubiak, Jeff Bunge, Vice-Chairman and Ray Nield, Chairman. Also present were Tim Kuiper, Attorney from Austgen, Kuiper & Associates; Ian Nicolini, Town Administrator; and Laurie Wyrick, Recording Secretary.

Minutes: Jeremy Kuiper moved to approve the Minutes from the January 20, 2011 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 to the March meeting. Jeff Bunge 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, Indiana

Vicinity: 14501 Morse Street

Request: Petitioner is requesting a Variance of Use from Zoning Ordinance 496, to allow an accessory structure for a business not located on the same lot. This lot has been approved for parking for the Tastee Top 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.
Deferred from the January 20, 2011 Public Meeting.**

Town Attorney Comments: Tim Kuiper stated that this Item and Item #2 can be combined as the Petitioner has requested deferral of both Items.

Petitioner's Response: E-mail dated February 15, 2011 requesting deferral to the March Meeting.

Town Administrator's Comments: None

Board's Discussion: None

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 – Developmental Variance

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

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 buildings 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 request is to allow a front yard setback of ten (10) feet, and a side yard setback of eight (8) feet, and the accessory structure will be located in the front yard as no primary structure is on the lot that is approved as parking for the restaurant.

**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.
Deferred from the January 20, 2011 Public Meeting.**

Town Attorney to Review Legals: See Item #1.

Board's Decision: See Item #1.

New Business:

3. VanDrunen – Developmental Variance

Owner/Petitioner: Mark VanDrunen, 8603 W. 132nd Place, Cedar Lake, Indiana

Vicinity: 8611 W. 132nd Place

Request: Petitioner is requesting a Variance from Zoning Ordinance No. 496, TITLE XXIII – Accessory Regulations. Section 1: General Accessory Regulations: A. 1. “There must be a complete residential structure on any given parcel of land prior to the construction of any accessory building...”

This Variance request is to allow an accessory building as the primary structure on the lot. The property is located in a Residential (R-2) Zoning District.

Attorney to Review Legals: Tim Kuiper stated that the notifications and publications are in order for tonight’s public hearing.

Petitioner’s Response: Mark VanDrunen was present at tonight’s public meeting. Mr. VanDrunen stated plans to rehabilitate the existing blighted structure into an accessory structure, explaining that the parcel cannot be combined with the primary structure’s parcels due to a platted three (3) foot walkway between the two (2) parcels that is owned by the Property Owner’s Association for the subdivision.

Remonstrators: None

Building Department’s Comments: Ian Nicolini requested that the Petitioner describe to the Board the condition and history of the structure planned for rehabilitation. Mr. VanDrunen responded that the single-story house has been abandoned for ten (10) years and not maintained; the interior is simply studs and cats are beginning to live in the structure. Ian Nicolini recommended approval of the request that will rehabilitate a blighted structure in the Town.

Board’s Discussion: Tim Kubiak stated that the walkway causes a unique circumstance of the property and the plans before the Board are an improvement for the community.

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.

Eric Burnham seconded. After a roll call vote, the motion carried by a vote of 5 to 0.

4. Hanover Community School Corporation Building Trades – Developmental Variance

Owner/Petitioner: Hanover Community School Corporation, 9520 W. 133rd Avenue, Cedar Lake, Indiana

Vicinity: 7413 W. 128th Place

Request: A Variance from Zoning Ordinance 496, Title VIII – Residential (R-2) Zoning Districts. Section 4: Area, Width and Yard Regulations: A. Minimum lot area and width: “A lot area of not less than eight thousand (8,000) square feet for a single-family dwelling, and a lot of not less than eighty (80) feet at the building line shall be provided.”

This variance request is to allow a lot six thousand two hundred and fifty (6,250) square feet in size, with a width of sixty-two and one-half (62.5) feet at the building line.

Petitioner is requesting a Variance from Zoning Ordinance 496, Title VIII – Residential (R-2) Zoning District. Section 4: Width, Area and Yard Regulation: 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.

Attorney to Review Legals: Tim Kuiper stated that the notifications and publications are in order for tonight's public hearing.

Petitioner's Response: Charles Cope was representing Hanover Building Trades at tonight's meeting. Mr. Cope requested a variance for the lot size and that the proposed structure is slightly over the allowable lot coverage for the zoning district. The proposed house is similar to existing homes in the neighborhood in size and character.

Remonstrators: Tim Kuiper stated that a letter was received from Carolyn Mace confusing on the tax key number and believes the property is owned by her not realizing the variances are for the adjacent property that is owned by the school.

Building Department's Comments: None

Board's Discussion: None

Board's Decision: Jeremy Kuiper 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.

Tim Kubiak seconded. After a voice vote, the motion carried unanimously.

5. Carlson – Developmental Variance

Owner/Petitioner: Richard D. Carlson, 7320 W. 126th Avenue, Crown Point, Indiana

Vicinity: 7320 W. 126th Avenue

Request: Petitioner is requesting a Variance from Zoning Ordinance 496, Title XXIII – Accessory Regulations. Section 1: General Accessory Regulations: A. 2. "Only one (1) accessory building in excess of two hundred (200) square feet shall be permitted per building lot upon issuance of a duly authorized building permit by the Building Department or duly designated representative of the Town." on lots over 1.01 acres and under 2.00 acres the maximum square footage allowed for accessory structures is one thousand two hundred (1,200) square feet and a height of fourteen (14) feet.

The existing accessory structure is approximately three hundred and thirty-four (334) square feet in size. *This variance request is to allow an additional accessory building approximately one thousand four hundred and forty (1,440) square feet in size and will be approximately twenty-five (25) feet in height to include a cupola located on the roof in a Residential (R-2) Zoning District.*

Attorney to Review Legals: Tim Kuiper stated that the notifications and publications are in order for tonight's public hearing.

Petitioner's Response: Mr. Carlson stated plans to construct a garage on the property. Jeremy Kuiper questioned the existing accessory structure use. Tim Kubiak questioned the parcels. Ian Nicolini stated that the property is two (2) separate surveyed parcels that have been combined. Jeff Bunge requested the existing structure be removed to reduce the variances required.

Remonstrators: None

Building Department's Comments: None

Board's Discussion: Tim Kubiak discussed that the wall height exceeds ten (10) feet and requested that the wall height be reduced to ten (10) feet. Mr. Carlson stated concerns about the roof pitch and allowing for a comfortable "porch" area walk space of the structure. Mr. Carlson submitted updated and more accurate drawings of the structure planned for the site. The architectural cupola for the structure was not a concern for the Members.

Board's Decision: Tim Kubiak moved to approved the variances with a maximum exterior wall height of ten (10) feet with a 4:12 pitch not to exceed sixteen (16) feet at peak plus the addition of a cupola to the structure, 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 5 to 0.

6. Wellwerts – Developmental Variance

Owner: Dapan Investments, 8100 W. 128th Avenue, Cedar Lake, Indiana
Petitioner: Andrew Wellwerts, 8100 W. 128th Avenue, Cedar Lake, Indiana
Vicinity: 11200 W. 129th Avenue
Request: Petitioner is requesting a Developmental Variance to allow a reduction of the thirty (30) foot front yard setback along W. 129th Avenue for parking, drive aisle and outdoor dining and to allow parking and drive aisle within the sixty (60) foot front yard setback along Wicker Avenue.

Attorney to Review Legals: Tim Kuiper recommended that these three (3) items be heard together for the matter of presentations and public hearing. The Board Members agreed. Tim Kuiper stated that the legals and notifications for this item and Items #7 and #8 are in order for tonight's public hearing.

Petitioner's Response: Noreen Wellwerts was representing Dapan Investments at tonight's meeting. Mrs. Wellwerts stated plans to open the business at the site of the former Legends on Wicker Avenue. The parking and outdoor beer garden are the same as previously utilized by Legends.

Remonstrators: Letter from Bosiljka Mihajlovic, 12845 Wicker Avenue, dated February 16, 2011, **for**, as Ms. Mihajlovic is anticipating improvements and use of the business.

Building Department's Comments: Ian Nicolini stated that the noise ordinance treats live entertainment sound the same as sound emitted from speakers and all other sounds.

Board's Discussion: Tim Kubiak questioned that live entertainment's location and the types of live entertainment planned. Mrs. Wellwerts responded that the budget will be a determining factor of a disc jockey or guitar player and similar; and the business is planning outdoor and indoor entertainment. Jeremy Kuiper stated concerns about fencing locations outside. Mrs. Wellwerts responded that the existing fenced area is approximately six (6) feet in height with an iron look in the same location as the previous and proposed beer garden area.

Board's Decision: Tim Kubiak moved to approve the Developmental Variances 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.

Jeff Bunge seconded. After a roll call vote, the motion carried by a vote of 5 to 0.

7. Wellwerts – Special Use Variance

Owner: Dapan Investments, 8100 W. 128th Avenue, Cedar Lake, Indiana
Petitioner: Andrew Wellwerts, 8100 W. 128th Avenue, Cedar Lake, Indiana
Vicinity: 11200 W. 129th Avenue

Request: Petitioner is requesting a Special Use Variance to allow alcohol sales in a Neighborhood Business (B-1) Zoning District.

Attorney to Review Legals: See Item #6.

Board's Recommendation to Town Council: Tim Kubiak moved to approve the Special Use Variance to allow alcohol sales for a restaurant in a Neighborhood Business (B-1) Zoning District as requested, 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 5 to 0.

8. Wellwerts – Variance of Use

Owner: Dapan Investments, 8100 W. 128th Avenue, Cedar Lake, Indiana

Petitioner: Andrew Wellwerts, 8100 W. 128th Avenue, Cedar Lake, Indiana

Vicinity: 11200 W. 129th Avenue

Request: Petitioner is requesting a Variance of Use to allow an outdoor dining with alcohol sales and to allow dancing and live entertainment in a Neighborhood Business (B-1) Zoning District.

Attorney to Review Legals: See Item #6.

Board's Recommendation to the Town Council: Jeremy Kuiper moved to send a Favorable Recommendation to the Town Council for the Variances of Use as presented contingent that full compliance with the Town's noise ordinances, as amended from time to time, be maintained, 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.

Tim Kubiak seconded. After a voice vote, the motion carried by a vote of 5 to 0.

9. Harvest Church – Variance of Use

Owner: Cedar Lake Partnership, P. O. Box 657, St. John, Indiana
Petitioner: Harvest Church, 11102 W. 181st Avenue, Lowell, Indiana
Vicinity: 12615 Wicker Avenue
Request: 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) permissible principal use per single lot in any Zoning District.”

This Variance of Use request is to allow more than one (1) use on a single zoning lot in a Community Business (B-2) Zoning District. The primary use on site is a vehicle sales lot and the proposed second primary use is a place of worship.

Attorney to Review Legals: Tim Kuiper stated that the notifications and publications are in order for tonight’s public hearing.

Petitioner’s Response: Pastor Brian Powers was representing Harvest Church at tonight’s meeting. John Schutz was present tonight representing Center Garage, the current tenant on the site that Harvest Church would share occupancy on the site. John Schutz stated that the site is accounting offices and overflow parking and where detail work is completed; vehicles are not sold directly on the site. Ample parking will be available for the church and that the hours of the church do not interfere with the hours that Center Garage utilizes the site. Pastor Brian Powers stated that services are on Tuesday evening, Sunday morning and Sunday evenings. Approximately fifty (50) parking spaces will be available for the church congregation with an additional two (2) ADA parking spaces, as required by ordinance.

Remonstrators: None

Building Department’s Comments: Ian Nicolini recommended delineation of fifty (50) parking spaces, two (2) ADA parking spaces and the drive aisle to improve safety for the congregation. The parking spaces need to be ten (10) feet in width and twenty (20) feet in length and the ADA spaces will need to comply with ADA regulations.

Board’s Discussion: Tim Kubiak stated safety concerns about the lack of parking and drive aisle delineation for the congregation. Jeremy Kuiper stated that the parking delineation will need to be completed for the site.

Board’s Recommendation to Town Council: Tim Kubiak moved to send a Favorable Recommendation to the Town Council to allow the Harvest Church to meet on the site utilized by Center Garage, as presented contingent upon parking spaces and drive aisle delineation to be completed within ninety (90) days of Town approvals, 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 roll call vote, the motion carried by a vote of 5 to 0.

10. Horvath Communications – Developmental Variance

Owner: Town of Cedar Lake, P.O. Box 707, Cedar Lake, Indiana
Petitioner: Horvath Communications, 123 4th Street, Chesterton, Indiana
Vicinity: 7408 Constitution Avenue
Request: Petitioner is requesting a Variance from Zoning Ordinance 496, Title VIII – Residential (R-2) Zoning District. Section 3: Height Regulations: “The maximum height of buildings and other structures erected or enlarged in this Zoning District shall be two (2) stories, not to exceed thirty (30) feet at its peak.”

This Developmental Variance is to allow a wireless communication facility one hundred and sixty (160) feet in height to support six (6) wireless carriers.

Attorney to Review Legals: Tim Kuiper recommended that this Item be combined with Item #11 for purposes of presentation and public hearing. The Board agreed. Tim Kuiper stated that the notifications and publications are in order for tonight’s public hearing.

Petitioner’s Response: Richard Riley was present representing Horvath Communications at tonight’s public hearing. Mr. Riley stated that at the Plan Commission’s Public Meeting last night, the Plan Commission deferred the approval of the Site Plan to a Special Public meeting on March 2, 2011 following the Work Session. Mr. Riley requested that the height variance and use variance before the Board of Zoning Appeals be approved contingent upon Site Plan approval from the Plan Commission. Mr. Riley explained that the Board of Zoning Appeals previously approved the height variance and sent a favorable recommendation for the Variance of Use to the Town Council; however, due to a tax key error that arose from when the town property split years previously, the items are once again advertised and adjacent property owners have been notified allowing the items to be heard before the boards and commissions a second time. Mr. Riley submitted updated plans and a copy of a study of the impact of the proposed tower to the property values of neighboring properties completed by the company of David A. Kunkel & Associates, Inc. on February 14, 2011. Mr. Riley reviewed much of the information in the study to the Board Members. Mr. Riley read the summation paragraph which stated that the proposed communications facility will not have any negative impact on the use, enjoyment, or value of surrounding properties or any substantial or undue adverse effect upon adjacent property, the character of the area, or other matters affecting public health, safety, and general welfare would occur. Mr. Riley explained how as wireless communications tower sites have developed throughout the years from locations mostly in rural settings and that safety features have evolved as the demand for the urban locations has increased. Mr. Riley explained the process of choosing the site and that Summerfest committee and the Parks Department have approved the location. The site is planned to be surrounded with a board-on-board fence and house up to six (6) wireless carriers. The Plan Commission considered relocating the tower within the forty (40) foot by sixty (60) foot parcel thirty (30) feet further from residents and that motion died due to lack of second. The Plan Commission deferred to a Special Public Meeting to be held on March 2, 2011 to discuss alternate sites within the town municipal grounds for the location of the proposed tower.

Remonstrators: Tim Kuiper spoke to the public in attendance stating that the public hearing on this item and the following item will be held in March on the 17th at 7:00 p.m. and welcomed attendance at that meeting as tonight the public hearing has been deferred remonstrance for both items will not be heard. And that the Plan Commission is holding a Special Public Meeting on March 2, 2011 following the Work Session that begins at 7:00 p.m.

Board’s Discussion: Tim Kubiak acknowledged that many of the residents in attendance would like the tower located in the center of the town municipal grounds; and believes that would be poor planning on the part of the town and the town should require that the tower be located closer to the borders of the property. Tim Kubiak stated concerns about the approval of the height and use variances when the Board is uncertain about the exact location as the lease will be a thirty (30) year lease between the town and petitioner. Ian Nicolini stated that alternative locations will be staked on the grounds and invited the members and public to review the sites prior to the special public meeting to be held on March 2, 2011 by the Plan Commission. Mr. Riley stated that the system of checks and balances is in place to approve the items before the Board at tonight’s meeting knowing that the Town

Council and Plan Commission both have approvals that need to be attained prior to any construction on site.

Board's Decision: Tim Kubiak moved to defer this Item and Item #11 to the March 17th Meeting. Jeff Bunge seconded. After a roll call vote, the motion carried by a vote of 5 to 0.

11. Horvath Communications – Variance of Use

Owner: Town of Cedar Lake, P.O. Box 707, Cedar Lake, Indiana
Petitioner: Horvath Communications, 123 4th Street, Chesterton, Indiana
Vicinity: 7408 Constitution Avenue
Request: Petitioner is requesting a Variance from Zoning Ordinance 496, Title VIII – Residential (R-2) Zoning District. Section 1: Intended Purposes: “The general character of this Residential Zoning District is to consist of single-family dwellings, set on medium sized building lots. Non-residential uses would be of similar character as those in Residential (R-1) Zoning Districts.”

This Variance of Use request is to allow a wireless communication facility at the Cedar Lake Municipal Complex.

Attorney to Review Legals: See Item #10.

Board's Decision: See Item #10.

Correspondence: None.

Public Comment: Robert Parker, 7413 W. 136th Court, stated dissatisfaction with the Town's actions regarding the proposed tower.

Adjournment: 8:20 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