

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

The Cedar Lake Board of Zoning Appeals held their Public Meeting on Thursday, March 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, and Jeff Bunge, Vice-Chairman. Also present were Tim Kuiper, Attorney from Austgen, Kuiper & Associates; Ian Nicolini, Town Administrator; and Laurie Wyrick, Recording Secretary. James Hunley, Member, was not present.

Minutes: Jeremy Kuiper moved to approve the Minutes from the February 17, 2011 Public Meeting. Tim Kubiak seconded. After a voice vote the motion carried unanimously.

Election of Officers:

- A. Chairman: Tim Kubiak nominated Jeremy Kuiper as Chairman of the Board of Zoning Appeals. Eric Burnham seconded. As there were no more nominations, Tim Kubiak moved to close the nominations. Eric Burnham seconded. After a voice vote, the motion carried unanimously. Tim Kubiak moved to elect Jeremy Kuiper as Chairman of the Board of Zoning Appeals. Eric Burnham seconded. After a voice vote, the motion carried unanimously.
- B. Vice Chairman: Tim Kubiak nominated Jeff Bunge as Vice Chairman of the Board of Zoning Appeals. Eric Burnham seconded. As there were no more nominations, Tim Kubiak moved to close the nominations. Eric Burnham seconded. After a voice vote, the motion carried unanimously. Tim Kubiak moved to elect Jeff Bunge as Vice Chairman of the Board of Zoning Appeals. Eric Burnham seconded. After a voice vote, the motion carried unanimously.

Attorney's Comments: Attorney Kuiper stated that the publications were not completed by the publisher for Items #5, #6 & #7 and that the Items would be deferred to the April meeting schedule. At this time representatives for DJ Cedar Lake requested to speak. Les Dewes and John Howard requested that due to publication error that the Board of Zoning Appeals move to hold a Special Public Meeting for the Public Hearing for the items related to 7501 Constitution Avenue. Mr. Dewes stated that the information concerning the site was submitted to the Town in a timely manner and the advertisements were sent to the publisher. The Town Attorney stated that the Board of Zoning Appeals can hold a Special Public Meeting to hear the items requested. The concern is coordinating the member's schedules with a time that the Town Hall is available. Tim Kubiak moved to defer Items #5, #6, & #7 to a Special Public Meeting for public hearings on March 31, 2011 at 7:00 pm. Eric Burnham seconded. After a voice vote, the motion carried unanimously. Tim Kuiper announced to the public that any remonstrators that were present at tonight's meeting for these items, be it for or against, should return for the March 31, 2011 Special Meeting at 7:00 p.m.

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.
Deferred from the February 17th Public Meeting.**

Town Attorney Comments: Tim Kuiper stated that this Item and Item #2 can be combined for the public hearing, presentation and discussion portions. The Board of Zoning Appeals agreed. Tim Kuiper stated that this Item and Item #2 have been properly continued for tonight's public hearing.

Petitioner's Response: David Carey was present at tonight's meeting. Mr. Carey stated that the original size of the proposed accessory structure has been reduced in size to twenty (20) feet in width and thirty (30) feet in depth. The lot has been approved as an overflow parking lot for the Tastee Top business located at 14500 Morse Street. The structure is planned for additional restaurant storage and for the equipment used for site maintenance.

Town Administrator's Comments: Ian Nicolini stated that the Plan Commission's Site Plan approval was contingent upon the final engineering approvals and intersection improvements connected with the parking lot of this property.

Board's Discussion: Eric Burnham stated concerns about access to the site. Mr. Carey responded that access for parking lot and the accessory structure will be from 145th Avenue. Jeremy Kuiper questioned the accessory structure drive substrate. Mr. Carey responded that the drive would be paved with asphalt. Tim Kubiak questioned the height of the sidewalls. Mr. Carey responded that the maximum sidewall height would be ten (10) feet. Jeremy Kuiper questioned the types of utilities if any that the structure would require. Mr. Carey responded that the only utility that will be connected to the structure is electricity for lights and the overhead door. Eric Burnham suggested that the front yard setback variance request reduced from ten (10) feet to twenty (20) feet as the building's size has decreased. The Petitioner agreed to this suggestion.

Board's Decision: Tim Kubiak moved to send a Favorable Recommendation to the Town Council to allow an accessory structure as a primary structure on the lot approved for a parking lot for the Tastee Top business not located on the same lot, 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.

Jeff Bunge seconded. After a roll call vote, the motion carried by a vote of 4-0.

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.

Deferred from the February 17th Public Meeting.

Town Attorney to Review Legals: See Item #1.

Board's Decision: Tim Kubiak moved to approve a front yard setback of twenty (20) feet, and accessory structure in the front yard of a lot with an eight (8) foot side yard 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 4 to 0.

New Business:

3. Szany – Developmental Variance

Owner: Dick Schilling, P.O. Box 657, St. John, Indiana

Petitioner: Louie Szany, 4980 W. 896 N., Lake Village, Indiana

Vicinity: 12841 Wicker Avenue

Request: 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." **And** Title XIII-Community Business (B-2) Zoning District. Section 5: Area, Width and Yard Regulations: B. Front Yard: 1) "On existing four (4) lane Federal or State Highways, a distance of sixty (60) feet."

This Variance request is to allow parking within the sixty (6) foot front yard setback along Wicker Avenue.

A Variance from Zoning Ordinance 496, Title XIII – Community Business (B-2) Zoning District. Section 5: Area, Width and Yard Regulations: C. Side Yard: "All interior lots shall have two (2) side yards, each having a width of not less than twelve (12) feet, except where party walls are used."

This Variance request is to allow parking within the twelve (12) foot side yard setback.

Attorney to Review Legals: Tim Kuiper suggested that the presentation, public hearing and discussion portions for this Item and Item #4 be heard together. The Board of Zoning Appeals agreed. Tim Kuiper stated that the notifications and publications are in order for this Item and Item #4 for tonight's public hearing.

Petitioner's Response: Louie Szany was present at tonight's meeting. Mr. Szany stated plans to open a light vehicle repair business and to sell used vehicles on the site and to sell tires and wheels. Mr. Szany currently runs a similar business on Wicker Avenue and would like to relocate and expand the business by relocating to this location. Used cars for sale will be parked in the front yard and the cars to be repaired will be parked in the side and rear of the property.

Remonstrators: Lawrence Beck, 11102 W. 129th Avenue, **neither**, stated concerns about storage in the rear lot and junk vehicle storage that could negatively impact Mr. Beck's yard and that the fence is in need of repair.

Building Department's Comments: Ian Nicolini stated that the variances before the Board of Zoning Appeals are concerning the parking and the amount of uses, not the uses themselves as the uses are permitted according to the Zoning Ordinance. Ian Nicolini recommended that limits to the amount of vehicles on the site at any given time as a part of any approvals granted by the Board of Zoning Appeals.

Board's Discussion: Tim Kubiak requested that light vehicle repair be clarified and questioned if engine repair and transmission work would be completed on site. Mr. Szany responded that light vehicle repair is brake work, tune ups, wheel and rim work and the like and that engine or transmission work would not be completed on site. Eric Burnham questioned the amount of vehicles on site. The Petitioner and the Board agreed to twenty (20) vehicles on site for sale and ten (10) for repair. Jeremy Kuiper questioned the amount of employees and parking. Mr. Szany stated that the business has only a couple of employees and that adequate parking will be available. Tim Kubiak requested clarity for work to be completed on site. Mr. Szany responded that much of the work can be completed in the rear fenced area. Jeff Bunge questioned the access for the site. Mr. Szany responded that the access to the site is from Wicker Avenue.

Board's Decision: Tim Kubiak moved to approve the Developmental 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 4 to 0.

4. Szany – Variance of Use

Owner: Dick Schilling, P.O. Box 657, St. John, Indiana
Petitioner: Louie Szany, 4980 W. 896 N., Lake Village, Indiana
Vicinity: 12841 Wicker Avenue
Request: Petitioner is requesting a Variance from Zoning Ordinance 496, Title XIII – Community Business (B-2) Zoning District. Section 1: Intended Purposes: “The Community Business (B-2) Zoning District is designed to provide for the needs of a larger consumer population than is served by the Neighborhood Business (B-1) Zoning District, and is generally characterized by an integrated cluster of establishments served by a common parking area and generating large volumes of vehicular and pedestrian traffic.” And 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 light vehicle repair, used vehicle sales and the sales of tires and wheels on a single zoning lot.

Attorney to Review Legals: See Item #3.

Board's Decision: Tim Kubiak moved to approve the Variance of Use to allow light vehicle repair, defined as tune-ups, brake work, tires/wheel replacement and similar in nature, wheel and tire sales, and used vehicles sales, contingent upon not more than twenty (20) vehicles for sale on the lot at any given time, no more than ten (10) vehicles for repair on the lot at any given time, no outdoor storage of junk vehicles or related items, and that the board on board fence to be repaired/replaced within sixty (60) days of occupancy, 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.

Eric Burnham seconded. After a roll call vote, the motion carried by a vote of 4 to 0.

Items #5, #6 & #7 were discussed at the beginning of the meeting.

5. Lighthouse - Developmental Variance

Owner/Petitioner: DJ Cedar Lake, LLC., 1000 E. 80th Avenue, Suite 700N, Merrillville, Indiana

Vicinity: 7501 Constitution Avenue

Request: Petitioner is requesting a Variance from Zoning Ordinance 496, Title XII – Neighborhood Business (B-1) Zoning District. Section 5: Area, Width and Yard Regulations: C. Side Yard: 4) “All interior lots shall have two (2) side yards, each having a width of not less than seven (7) feet, except where party walls are used.” Zoning Ordinance 496, Title XXIII – Accessory Regulations. Section 1: General Accessory Regulations: A. 5) “There shall be a minimum six (6) foot setback from any and all side and rear property lines and a minimum ten (10) foot separation or distance from all other buildings.”

Petitioner is requesting a Developmental Variance to allow a side yard setback of zero (0) feet; the location of the portable accessory structure to have a setback of zero (0) feet and a separation of less than ten (10) feet between the primary structure and the accessory structure.

Attorney to Review Legals: **Publication was not made-error by publisher. This matter will be republished and should be continued to the March 31, 2011 Special Public Meeting.**

6. Lighthouse – Variance of Use

Owner/Petitioner: DJ Cedar Lake LLC., 1000 E. 80th Avenue, Suite 700N, Merrillville, Indiana

Vicinity: 7501 Constitution Avenue

Request: Zoning Ordinance No. 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 the premises where produced.”

Petitioner is requesting a Variance of Use to allow live entertainment and dancing in a Neighborhood Business (B-1) Zoning District.

Attorney to Review Legals: **Publication was not made-error by publisher. This matter will be republished and should be continued to the March 31, 2011 Special Public Meeting.**

7. Lighthouse – Special Use Variance

Owner/Petitioner: DJ Cedar Lake LLC., 1000 E. 80th Avenue, Suite 700N, Merrillville, Indiana

Vicinity: 7501 Constitution Avenue

Request: Zoning Ordinance No. 496, Title XII – Neighborhood Business (B-1) Zoning District. Section 3: Special Use Exceptions: “The following uses may be permitted, provided they are approved by the Board of Zoning Appeals and are subject to any conditions placed upon them by the Board of Zoning Appeals.” A. “Any use permitted in a Community Business (B-2) Zoning District.”

Attorney to Review Legals: **Publication was not made-error by publisher. This matter will be republished and should be continued to the March 31, 2011 Special Public Meeting.**

Old Business:

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

Deferred from the February 17th Public Meeting.

Attorney to Review Legals: Tim Kuiper recommended that this Item and Item #9 be heard together for the purposes of presentation and public hearing and discussion. The Board of Zoning Appeals members agreed. Tim Kuiper stated that this Item and Item #9 have been properly continued for tonight's public hearing.

Petitioner's Response: Richard Riley was present representing Horvath Communications at tonight's meeting. Mr. Riley stated that the Plan Commission did not take action to approve or not approve the site plan; the vote was 3 to 2 concerning the alternate site. The access to the alternate forty (40) foot by sixty (60) foot site will be from existing drives. The plans show the tower located out side of the fenced area that is approximately forty-five (45) feet by forty (40) feet. Mr. Riley stated that the overall site is the same size; the fencing is altered with the pole inside or outside of the fence and that the lighting will remain in place for the flag. Once construction has been completed, maintenance of the site, usually smaller vehicles, will be completed on a monthly basis. The Plan Commission has stated that a white vinyl fence would be acceptable for the site; however, a board of board fence is preferred for security and aesthetic purposes. Mr. Riley requested that the Board of Zoning Appeals move forward with the variances as the Plan Commission is holding a Special Public Meeting on April 6, 2011 concerning the Site Plan approval.

Remonstrators:

1. Diane Jostes, 134th Place, **against**, health concerns and prefers a location that is not on this property.
2. Robert Parker, 136th Lane, **against**, health concerns.
3. Scott Campbell, Cedar Lake Yacht Club, **against**, health concerns, property value concerns, submitted paperwork.
4. Susan Slivka, 119th Court, **against**, prefers a location that is not on this property.
5. Tammy Warczynski, 136th Lane, **against**, stated that the best interest of the community is to not have the tower located on this property.

Building Department's Comments: Ian Nicolini stated that the Petitioner has submitted the applications and information required by the Town, an appraisal report concerning property values and completed several presentations before the Board of Zoning Appeals and the Plan Commission.

Board's Discussion: Jeff Bunge questioned the site of the communications tower that would be on the grounds and if the variances were attached to a specific location or just in the parcel itself. Tim Kuiper responded that the variances before the Board of Zoning Appeals pertain to the parcel; the location as site plan approval is a matter for the Plan Commission. Ian Nicolini stated that there are currently two (2) locations within the parcel that the Plan Commission is considering for Site Plan Approval. Jeremy Kuiper stated that the variances were continued as the Board of Zoning Appeals wanted a clearer picture of the location of the proposed tower. Tim Kuiper stated that the Board of Zoning Appeals does not approve the site; however, a recommendation to the Plan Commission can be forwarded stating a preference of a certain location or requirement of the site. Tim Kubiak requested clarification on the warning signs required associated with this type of equipment. Mr. Riley responded that the FCC has adopted protections and studied standards of review concerning installations of such equipment; the FCC does not preempt locations but have preempted any Town, Board or Commission from using health as an issue or a reason to deny approval. Radio stations and television stations emit a higher level of radio waves than emitted by the proposed tower and all facilities have warnings as the signage is mandated. Mr. Riley stated that a community needs to be assured that the proposed tower is not a detriment to health, the radio waves are emitted horizontally; a study on property values has been submitted. Mr. Riley stated that eighty to ninety percent (80-90%) of all emergency phone calls are originated from wireless phones; which stresses the importance of wireless coverage in areas. Eric Burnham questioned whether the tower would be located within the fence. Tim Kuiper stated that the Plan Commission hasn't made that decision. Eric Burnham stated concerns about the flag sound. Mr. Riley responded that the flag is a permanent addition meaning that a reduced amount of external hardware. Tim Kubiak stated that information can be found on the internet to prove and disprove any information that a person chooses to prove or disprove. Jeremy Kuiper, Tim Kubiak and Eric Burnham stated a preference for the original site. Tim Kuiper stated that the Board of Zoning Appeals can forward a consensus to the Plan Commission stating a preference for the original site. The Recording Secretary was directed to forward a consensus to the Plan Commission stating that the Board of Zoning Appeals prefers the original site.

Board's Decision: Tim Kubiak moved to approve the Developmental Variance as presented to allow a wireless communications facility one hundred and sixty (160) feet in height to support six (6) wireless carriers, 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 voice vote, the motion carried by a vote of 3 to 1, with Jeff Bunge voting against.

9. 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.

Deferred from the February 17th Public Meeting.

Attorney to Review Legals: See Item #8

Board's Recommendation to Town Council: Tim Kubiak moved to send a Favorable Recommendation to the Town Council to allow a wireless communication facility at the Cedar Lake Municipal Complex stating a preference for the original site located towards the northwestern portion of the property, 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.

Eric Burnham seconded. After a roll call vote, the motion carried by a vote of 3 to 1, with Jeff Bunge voting against.

Correspondence: None.

Public Comment:

- A. Yvonne Taves, Dewey Street, thanked the Board of Zoning Appeals Members and agreed about the preference of the original location for the wireless communications tower.
- B. Robert Parker, W. 136th Lane, stated disappointment that the Board of Zoning Appeals prefers the original site.
- C. Susan Slivka, 119th Court, stated concerns that approvals tonight would set precedence in the Town. Attorney Kuiper responded that part of the variance process is that each variance is unique and does not set precedence within the Town.

Adjournment: 8:50 p.m. Jeremy Kuiper adjourned the meeting.

Press Session: None

James Hunley

Tim Kubiak

Eric Burnham

Jeff Bunge, Vice Chairman

Jeremy Kuiper, Chairman

Attest: _____
Laurie Wyrick, Recording Secretary