

Town of Cedar Lake-Board of Zoning Appeals
Public Meeting Minutes
May 19, 2011

The Cedar Lake Board of Zoning Appeals held their Public Meeting on Thursday, May 19, 2011. The meeting was called to order at approximately 7:00 p.m. at the Cedar Lake Town Hall. Those Members present were: Eric Burnham, Tim Kubiak, Jeff Bunge, Vice-Chairman, and Jeremy Kuiper, 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: Eric Burnham moved to approve the Minutes from the March 17, 2011 Public Meeting. Tim Kubiak seconded. After a voice vote, the motion carried unanimously. Eric Burnham moved to approve the Minutes from the April 21, 2011 Public Meeting. Tim Kubiak seconded. After a voice vote, the motion carried unanimously.

Public Hearings:

New Business:

1. Midwest PGM – Special Use

Owner: Industrial Drive Properties, 11363 W. 135th Avenue, Cedar Lake, Indiana
Petitioner: Midwest PGM, 11363 W. 135th Place, Cedar Lake, Indiana
Vicinity: 10501-9 & 10 W. 133rd Avenue
Request: A Special Use from TITLE XVI – Light Industrial (M-1) Zoning District. Section 2: Use Regulations. B. “The following uses may be permitted, provided they are approved by the Board of Zoning Appeals and are subject to any conditions place upon them by the Board of Zoning Appeals: “11. “Storage, sorting, collection or baling of rags, paper, metal or junk;”

This Special Use Variance is to allow the outdoor storage, sorting, collection or baling of rags, paper, metal or junk.

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

Petitioner’s Response: Richard Thiel was present representing Midwest PGM at tonight’s meeting. Mr. Thiel stated that the business would be similar to the current business and this lot and building are larger than those at the current site. More of the items could be stored indoors including the aluminum baled and cardboard bales. All indoor storage will be conducted in Unit #1 as Unit #2 is currently vacant. A layout of the site and outdoor storage item list for the outdoor storage was submitted. Seven (7) bins are shown for the site, small self-dumping hoppers to be used for moving materials and roll-off containers for loading of the items to be removed are planned for the site. The items planned for outdoor storage are aluminum sheet, plate and structural (steel), heavy melt (steel), stainless steel/aluminum extruded & miscellaneous non-ferrous metals, clean sheet iron, sheet iron shred, and cast iron. Tim Kubiak stated concerns about the amount of roll-off containers on site. The Petitioner responded that the roll-off containers are leaving daily from the current site; the new site will have less need of an abundance of roll-off containers as this site is larger and will have the seven (7) bins proposed. Plans are underway to acquire a material handler, to increase the turn around rate of materials on site. The larger site will allow for the amount of roll-off containers to be reduced as a semi-tracker trailer truck will be removing materials from the site

Remonstrators: None

Building Department’s Comments: Ian Nicolini stated that the engineering items associated with any Plan Commission’s Site Plan Approval will need to be addressed. The Petitioner stated that the engineering items are being addressed.

Board’s Discussion: Discussed during Petitioner’s Response.

Board’s Decision: Tim Kubiak moved to send a Favorable Recommendation to the Town Council to allow the outdoor storage, sorting, collection or baling of rags, paper, metal or junk, contingent upon compliance with Plan Commission’s Site Plan Approval and associated engineering items, not more than five (5) roll-off dumpsters, according to the “Outdoor Storage Item List” submitted and to include the same, 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:

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

2. Barajas – Variance of Use

Owner: Frank Ponziano, 12021 W. 95th Place, St. John, Indiana
Petitioner: Teresita Barajas, 10800 W. 133rd Avenue, Cedar Lake, Indiana
Vicinity: 10800 W. 133rd Avenue
Request: A Variance of Use from 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 outdoor dining and outdoor cooking for a grocery store in a Neighborhood Business (B-1) Zoning District.

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

Petitioner’s Response: Teresita Barajas was present at tonight’s meeting. Ms. Barajas stated that the grocery store is planning to set up a couple of picnic tables on the west side of the property for patrons to eat dinners and sometimes grill out-of-doors. Tim Kubiak suggested that the property has a limited amount of parking spaces. Ian Nicolini suggested that the grassy area on the west and/or north side of the site be utilized for dining. The Petitioner agreed to use the area to the north of the building as the area is larger and plans are in discussion to expand the grocery to allow indoor dining in the rear (north) part of the building in the future.

Remonstrators: Mary Nigh, 10728 W. 133rd Avenue, stated concerns about the parking with the increase in business as the patrons often park on the adjacent property to the east. Ian Nicolini suggested the Petitioner and Ms. Nigh meet later to discuss parking signage to clarify for grocery patrons the proper parking areas.

Building Department’s Comments: Ian Nicolini recommended that the grassy areas be utilized for dining as the parking areas will need to be preserved.

Board’s Discussion: Tim Kubiak stated concerns about the painted signs on the building and sign ordinance regulations for the Town. Ms. Barajas agreed to apply for permits if additional painting is planned. Tim Kubiak questioned the grill planned for the site. The Petitioner responded that the grill will be portable and there will be approximately three (3) picnic tables.

Board’s Decision: Tim Kubiak moved to send a Favorable Recommendation to the Town Council to allow outdoor cooking and dining, contingent on no more than three (3) picnic tables and a portable grill be placed in the grassy area as discussed, 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 to 0.

3. Austgen – Developmental Variance

Owner/Petitioner: William Austgen, 8505 W. 141st Lane, Cedar Lake, Indiana

Vicinity: 8505 W. 141st Lane, Cedar Lake, Indiana

Request: A Variance from Zoning Ordinance No. 496 Title VIII – Residential (R-2) Zoning District 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 reduced building lot line.

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.”

This Variance request is to allow a rear yard of fifty (50) feet; the lot requires a sixty-eight (68) feet and nine (9) inches.

A Variance from Zoning Ordinance No. 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 Variance request is to allow a building height to exceed thirty (30) feet.

A Variance from Zoning Ordinance No. 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.” a. “Said building shall not exceed ... one thousand (1,000) square feet in size on any lot 15,000-1.00 acre size...”

This Variance request is to allow a second accessory structure in excess of two hundred square feet in size. The existing accessory structure is eight hundred and thirty-three (833) square feet in size and the proposed second accessory structure will be approximately one thousand and one (1,001) square feet in size.

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

Petitioner’s Response: William Austgen was present at tonight’s meeting. Mr. Austgen submitted plans to build a single-family home on a lake front lot and stated that the deck of the house would be approximately fifty-five (55) feet from the seawall and the roof will be thirty-six (36) feet high according to the street view.

Remonstrators: None

Building Department's Comments: Ian Nicolini stated that the Town Council held a public hearing concerning a public way vacation application on Tuesday, May 17, 2011, the second reading will be on June 7, 2011. The public way before the Town Council will reduce the frontage for this parcel, which is the reason behind the reduced building lot line variance. Ian Nicolini stated that the Board of Zoning Appeals can direct that the sewer easement be located prior to building on the site.

Board's Discussion: Tim Kubiak, Jeremy Kuiper and Eric Burnham stated that the existing accessory structure matches the character of the neighborhood and lot size.

Board's Decision: Tim Kubiak moved to approve the Developmental Variances as presented contingent upon the location of the sewer easement and that the construction will not infringe upon any existing/found sewer easement for 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; 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. Cocco – Variance of Use

Owner: Martha Ann Kubal, 13134 Lake Shore Drive, Cedar Lake, Indiana
Petitioner: Sylvia Cocco, 1940 E. Offner Road, Beecher, Illinois
Vicinity: 13134 Lake Shore Drive
Request: A Variance of Use from Zoning Ordinance No. 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."

Petitioner is requesting a Variance of Use to allow an outdoor dining with alcohol sales, alcohol consumption and live entertainment in a Community Business (B-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: Sylvia Cocco was present at tonight's meeting. Ms. Cocco runs the business known as Boondocks at the location. The business is a restaurant serving alcohol and would like to have outdoor acoustical, two-person band, and similar family-friendly live entertainment, with the dining and alcohol in the same area. The activity takes place depending on the weather conditions, during inclement weather the activity is held in the screened area. The latest the activity is planned is approximately 10:30 p.m.; Ian Nicolini stated that 11:00 p.m. is permitted by ordinance.

Remonstrators: None

Building Department's Comments: Ian Nicolini stated that the application requests permission for "solo acoustic performances". Ms. Cocco responded that some of the performances are amplified; no neighbors have complained and the performances occurred last summer. Ian Nicolini questioned the outdoor area for alcohol sales and consumption. Ms. Cocco responded that the area is not fenced; however, the area has a rock wall and the lake to deter trespass. Tim Kuiper stated that the Board of Zoning Appeals can approve the entertainment and that alcohol can be on site; however, the State of Indiana is the authority on the liquor license and has the final approval of the outdoor sales and consumption. Tim Kuiper stated that the holder of the liquor license will need to amend the liquor license to include outdoor alcohol. Ian Nicolini recommended that the receipt of the amended liquor license by the Town be a contingency of the action taken by the Board at tonight's meeting.

Board's Discussion: No further discussion.

Board's Decision: Tim Kubiak moved to send a Favorable Recommendation to the Town Council to allow outdoor alcohol sales and consumption upon receipt of the amended liquor license, outdoor dining and live entertainment, to conform to the current noise ordinance(s) as discussed, 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 Bungee seconded. After a roll call vote, the motion carried by a vote of 4 to 0.

Correspondence: None.

Public Comment:

Adjournment: 7:55 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