

**Town of Cedar Lake-Board of Zoning Appeals
Public Meeting Minutes
July 21, 2011**

The Cedar Lake Board of Zoning Appeals held their Public Meeting on Thursday, July 21, 2011. The meeting was called to order at approximately 7:07 p.m. at the Cedar Lake Town Hall. Those Members present were: Tim Kubiak, Diane Cusack, Jeff Bunge, Vice-Chairman, and Jeremy Kuiper, Chairman. Eric Burnham arrived at approximately 7:10. Also present were Tim Kuiper, Attorney from Austgen, Kuiper & Associates; Ian Nicolini, Town Administrator; and Jen Montgomery, Recording Secretary.

Minutes: Jeff Bunge moved to approve the Minutes from the May 19, 2011 Public Meeting. Diane Cusack seconded. After a voice vote, the motion carried unanimously.

Chairman's Comments: Chairman Jeremy Kuiper welcomed Jen Montgomery as the new recording secretary for the Board.

Public Hearings:

Old Business:

1. St. Michael the Archangel Polish National Catholic Church – Variance of Use

Owner/Petitioner: St. Michael the Archangel Polish National Catholic Church, 10717 W. 134th Place, Cedar Lake, Indiana

Vicinity: 6629 W. 133rd Avenue

Request: Petitioner is requesting a Variance of Use from Zoning Ordinance No. 496, Title XXII, Sign Regulations. Section 1: Prohibited Signs: A. "The Following signs are prohibited in all Zoning Districts: ... 9. Signs which display any flashing or intermittent lights, or lights changing intensity or color, except signs indicating time or weather conditions;"

This Variance of Use request is to allow an illuminated digital message sign.

Board's Discussion: Tim Kubiak stated that the Petitioner has requested to be deferred an additional month.

Board Decision: Tim Kubiak moved to defer to the August meeting schedule. Diane Cusack seconded. After a roll call vote, the motion carried 4-0.

New Business:

2. Hughes – Developmental Variance

Owner/Petitioner: Linda Hughes, 13602 Wicker Avenue, Cedar Lake, IN 46303

Vicinity: 13602 Wicker Avenue, Cedar Lake, IN 46303

Request: Petitioner is requesting a Variance from Zoning Ordinance No. 496, Title XXI – Fence Regulations. Section 1: Fences Located in Residential Districts: B. Fences shall not be allowed in front yards, except: "1) Residential areas not served by sidewalks may have front yard fences with a maximum height of forty-eight (48) inches; 2) A setback of six (6) feet from the front property line shall be required."

This variance request is to allow a front yard fence with a height of seventy-two (72) inches.

A Variance from Zoning Ordinance 496, Title XXIV, Swimming Pool Regulations, Section 3: Location. "No portion of an outdoor swimming pool shall be located at a distance of less than ten (10) feet from any side or rear property line, or building line, nor at any other location where a "structure" is prohibited under other terms of this Zoning Ordinance,..." i.e. TITLE XXIII, Accessory Regulations, Section 1: General Accessory Regulations. A. (4) "No accessory building shall be allowed in the front yard of any residential lot."

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This Variance request is to allow a swimming pool in the front yard 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: Linda Hughes was present at tonight's meeting to request a variance to allow a six (6) foot fence and a swimming pool in the front yard. Ms. Hughes stated that the way her lot sits, she technically has no rear yard. The location of the pool will not compromise the well and is the only location that will work. Ms. Hughes also requested a variance to have a six (6) foot fence. The fence will not extend past the front of the house, but must request a variance since the whole lot is considered a front yard.

Remonstrators: None.

Building Department's Comments: None.

Board's Discussion: Tim Kubiak inquired why Ms. Hughes has no rear yard. Ian Nicolini explained that because the lot is technically land-locked, the yard fronts on the nearest street. Discussion occurred about why it is considered a front yard. Jeremy Kuiper asked what the need of the six (6) foot fence was. Ms. Hughes explained that she must seek the variance because the lot is a front yard. Tim Kubiak explained that the fence will not go past the front of the home.

Board's Decision: Tim Kubiak moved to accept 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 5-0.

3. Besand – Developmental Variance

Owner/Petitioner: Trisha Besand, P.O. Box 927, Cedar Lake, IN 46303

Vicinity: 12630 Alexander Street, Cedar Lake, IN 46303

Request: Petitioner is requesting a Variance from Zoning Ordinance 496, Title XXI – Fence Regulations. Section 1: Fences Located in Residential Districts: B. Fences shall not be allowed in front yards, except: "1) Residential areas not served by sidewalks may have front yard fences with a maximum height of forty-eight (48) inches; 2) A setback of six (6) feet from the front property line shall be required."

This variance request is to allow a front yard fence with a height of seventy-two (72) inches.

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

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Petitioner's Response: Trisha Besand was present at tonight's meeting to request a variance to allow a six (6) foot fence in the front yard. Ms. Besand stated she wants to install a fence on the north side of the property to extend past the house to the telephone pole. Ms. Besand stated that the fence will not enclose the front yard, and that the fence will match the existing fence in the rear yard. Ms. Besand Ms. Besand stated she is requesting the fence due to differences with the neighbor to the north. After explanation of setbacks and the vision triangle, Ms. Besand asked how far back the fence would have to be set back.

Remonstrators:

- **Joe Kubiak** of 12632 Alexander was present at tonight's meeting. Mr. Kubiak stated he is Ms. Besand's neighbor to the south. Mr. Kubiak asked if the fence will also go to the road on the south side of the property. Ms. Besand stated that a six (6) foot fence will be installed on the south lot line and will stop at the front of the house. Ms. Besand stated that the fence will only extend past the house on the north property line. Mr. Kubiak also stated concerns about the ability to see oncoming vehicles, as he often tows large trailers, making it more difficult to exit his driveway.
- **Brandon Dobe** of 12641 Alexander was also present at tonight's meeting. Mr. Dobe stated he lives across the street from Ms. Besand and was under the assumption that the fence would enclose the front yard, but that the issue has been clarified. Mr. Dobe also inquired if there would be an inspection once the fence is installed.
- A written remonstrance against the variance was received from **Jim and Dawn DeBoer** of 12631 Alexander. Mr. and Mrs. DeBoer stated that a fence enclosing the property would take away from the rural look of the neighborhood, making the property seem more like a compound.

Building Department's Comments: Ian Nicolini clarified to the Board where the proposed fence will be installed. Mr. Nicolini explained that the fence in the front yard would need a variance, as it does not comply with the Town's Zoning Ordinance. Mr. Nicolini recommended a twenty-five (25) foot setback from the edge of the road for the health and safety of others in the neighborhood due to an obstruction of the road. Mr. Nicolini explained that the Zoning Ordinance is put in place to set a uniform standard, and that some things have less flexibility, especially when safety is involved. One of the Findings of Fact of the Board of Zoning Appeals has to determine is that their action will not be a health or safety impact to anyone else. If this cannot be done, the Board cannot approve the variance. Mr. Nicolini stated that the fence would have to be at least 20-25 feet back from the road for the purposes of safety for others.

Board's Discussion: The Board discussed the vision triangle and recommended a setback to prevent creating hazardous conditions for other drivers on the road. The Board also discussed the exact location of the fence, and clarified that the fence will only be along the northern property line, and will not run across the property line, enclosing the yard. It was clarified that the variance is for the height of the fence, not the existence of the fence. Tim Kubiak suggested tapering down from a six (6) foot fence to a four (4) foot fence in the front yard. Jeremy Kuiper asked if Ms. Besand was able to enclose the backyard with a gate in order to keep her dog from getting to the neighbor's yard. Ms. Besand explained that she is not planning on closing the back yet, and the main reason for the six (6) foot fence is to separate them from the neighbors. Tim Kubiak suggested that the six (6) foot fence extend past the house thirty (30) feet and taper down to four (4) feet for the rest of the front of the yard, six (6) feet in from the property line.

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Board's Decision: Tim Kubiak moved to allow a six (6) foot fence to extend thirty (30) feet past the front of the house, to taper down to four (4) feet to meet the minimum six (6) foot setback per the Ordinance, 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.

Diane Cusack seconded. After a roll call vote, the motion carried 4-1, with Jeremy Kuiper voting against.

4. Howes – Developmental Variance

Owner/Petitioner: Kenneth Howes, 12513 Meadowlark Lane, Cedar Lake, Indiana 46303

Vicinity: 12513 Meadowlark Lane, Cedar Lake, Indiana 46303

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 of duly designated representative of the Town. a. “Said building shall not exceed eight hundred (800) square feet in size.”

This Variance Request is to allow the existing accessory structure of four hundred twenty-one (421) square feet in size and a proposed accessory structure of four hundred thirty-two (432) square feet in size.

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

Petitioner's Response: Kenneth Howes was present at tonight's meeting to request a variance to build a garage in the rear yard that exceeds the allowed two hundred (200) square feet. Mr. Howes stated he has a boat that he keeps on a slip on the lake during the summer months, and needs a place to store said boat through the winter. The garage will be on the northeast corner of the lot, where a garden currently is. The garage will also house a jet ski. Mr. Howes stated that the height of the building is approximately fourteen (14) feet, not including the decorative cupola on top of the structure.

Remonstrators: None.

Building Department's Comments: Ian Nicolini stated that a cupola is usually used as a decorative adornment and common sense would say they would be acceptable, but in the interest of consistency and to possibly avoid issues in the future, maybe the height of the cupola should be included in the height of the structure.

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Board's Discussion: Tim Kubiak asked if Havenwood has any rules for or against the garage being built. Eric Burnham stated that he is on the Board for Havenwood and that he personally signed off allowing the structure to be built. Mr. Burnham stated that according to Havenwood covenant, water vehicles cannot be visible for more than seven (7) days, or the homeowner will be fined. Jeremy Kuiper inquired what the total height of the building is, and if that height included the cupola. Discussion occurred whether or not the cupola should count as part of the size of the building. Eric Burnham asked how the boat will be towed back to the garage and if a road would be put in to the garage. Mr. Howes stated that he will use his tractor to pull the boat and jet ski to the garage, through the grass. Mr. Howes also stated that he will only be putting the boat in and pulling the boat out of the garage two (2) times a year, when he takes his boat to the slip for the season, and when he pulls it out for winter. More discussion occurred regarding whether or not the cupola should be included in the height of the building. As the cupola is decorative, the Board agreed to a maximum height for the cupola.

Board's Decision: Tim Kubiak moved to grant the variance as requested, with a maximum cupola height of thirty (30) inches, 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 5-0.

Correspondence: None.

Public Comment: None.

Adjournment: Jeff Bunge moved to adjourn the meeting. Diane Cusack seconded. After a voice vote, motion carried. Jeremy Kuiper adjourned the meeting at 7:55 p.m.

Press Session: None

James Hunley

Tim Kubiak

Eric Burnham

Jeff Bunge, Vice Chairman

Jeremy Kuiper, Chairman

Attest: _____
Jenn Montgomery, Recording Secretary