

Town of Cedar Lake – Board of Zoning Appeals
Public Meeting Minutes
February 16, 2012

The Cedar Lake Board of Zoning Appeals held their Public Meeting on Thursday, February 16, 2012. The meeting was called to order at approximately 7:03 p.m. at the Cedar Lake Town Hall. Those Members present were: Tim Kubiak, Eric Burnham, Diane Cusack and Jeff Bunge, Vice Chairman. Attorney Tim Kuiper, of Austgen, Kuiper & Associates, Ian Nicolini, Town Administrator, and Jenn Montgomery, Recording Secretary, were also present. Jeremy Kuiper, Chairman, was not present.

Minutes: Tim Kubiak moved to defer the Minutes from the January 19, 2012 Public Meeting. Eric Burnham seconded. After a voice vote, the motion carried unanimously. Minutes will be voted on at the next Public Meeting.

Public Hearings:

New Business:

1. Collins – Developmental Variance

Owner/Petitioner: William Collins, 14750 Dewey Street, Cedar Lake, Indiana

Vicinity: 14750 Dewey Street, Cedar Lake, Indiana

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title XXIII – Accessory Regulations, Section 1: General Accessory Regulations: A. 4. “No accessory buildings shall be allowed in the front yard of any residential lot;” **and**, “on lots 10,000 to 15,000 square feet in size, the maximum square footage allowed for accessory structures is eight hundred (800) square feet in size with a height of fourteen feet (14’) at the peak.

Petitioner is requesting a Developmental Variance to allow an accessory structure of one thousand forty (1,040) square feet in size with a height of sixteen (16) feet at the peak in the front yard of the lot.

Attorney to Review Legals: Attorney Tim Kuiper stated the notices and publications for this item are in order for tonight’s hearing.

Petitioner’s Response: William Collins was present at tonight’s meeting to request a variance for an accessory structure. This item was presented to the Board of Zoning Appeals and approved for the same variance in June 2011, but did not execute a building permit within the required ninety (90) days.

Remonstrators: None.

Building Department’s Comments: None.

Board’s Discussion: Tim Kubiak asked what the roof pitch of the proposed building will be. The roof pitch will be the same as the house, and will have ten foot (10’) sidewalls.

Board’s Decision: Tim Kubiak moved to approve the variance request 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.

Diane Cusack seconded. After a roll call vote, the motion carried 4-0.

2. Luke Oil – Developmental Variance

Owner/Petitioner: Luke Land, LLC, 3592 N Hobart Road, Hobart, Indiana

Vicinity: Vicinity of 133rd Avenue and Morse Street, Cedar Lake, Indiana

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title XII – Neighborhood Business B-1 Zoning District, Section 5: Area, Width and Yard Regulations: B. Front Yard: Each lot shall front on a dedicated and improved street. There shall be a front yard between the building line and the highway line and the highway or street right-of-way lines as follows: 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.

Petitioner is requesting a Developmental Variance to allow gasoline pump islands within the required fifty (50) foot setback.

Attorney to Review Legals: Attorney Tim Kuiper stated the notices and publications for this item are in order for tonight's hearing.

Petitioner's Response: Mike Zell of Luke Oil was present at tonight's meeting. Mr. Zell stated that during the initial variance process, they had overlooked the setback for the gasoline pump islands. Without the site plan set at the time, the setbacks were unclear for the islands, so Luke Oil is trying to address all issues prior to construction.

Remonstrators: None.

Building Department's Comments: Ian Nicolini stated that a draft was sent for review that will look at the Ordinance and consider reducing the required setback, as this request is fairly common with new developments.

Board's Discussion: Discussion occurred regarding proposed easements along 133rd Avenue.

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

Diane Cusack seconded. After a roll call vote, the motion carried 3-1, with Jeremy Kuiper voting against.

3. True Value – Use Variance

Owner/Petitioner: Al Bunge, Jr., 7120 W 133rd Avenue, Cedar Lake, Indiana

Vicinity: 9708 Lincoln Plaza Way, Cedar Lake, Indiana

Request: Petitioner is requesting a Use Variance from Zoning Ordinance No. 496, Title XIII – Community Business (B-2) Zoning District.

Petitioner is requesting a Use Variance to allow permanent outdoor sales.

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

Petitioner's Response: Al Bunge, Jr. was present at tonight's meeting to request a use variance to allow outdoor sales. In the past, there was an approval on the property that allowed outdoor sales. However, there was a contingency stating that the approval would be null and void if ownership of the property changed. Outdoor sales will consist of the area in front of the store, a thirty foot by eighty foot (30' x 80') concrete pad on the west side of the building and overflow storage and sales on the west end of the parking lot. Mr. Bunge stated that he and SVT, LLC are working out an agreement stating same. These areas will be used to store larger inventory items and that customer appreciation days will also occur outdoors.

Remonstrators: SVT, LLC provided a written remonstrance in favor of these outdoor sales as long as sales remain in accordance with the agreement that has been worked out between the two (2) parties.

Building Department's Comments: Ian Nicolini stated that the concrete pad was approved by the Plan Commission as part of the site plan.

Board's Discussion: Diane Cusack asked if a canopy will be over the concrete pad. Al Bunge stated that there will not be a canopy, but the area will be fenced in. Tim Kubiak asked what the intention of the parking lot area will be. Mr. Bunge stated that this will be used, as needed, for bulk products, such as soil or mulch, as an overflow area. The rear area of the concrete pad will also be used for this. Tim Kubiak stated that he would like to see some kind of limit to the number of pallets that can be stored in the parking lot area. Tim Kubiak asked if there will be a door to access the concrete pad from inside the store. Al Bunge stated that customers will be able to

access the area from inside the store and from the front, where a gate will be installed.

Board's Decision: Diane Cusack moved to send a favorable recommendation to the Town Council for the variance as requested, contingent upon a maximum of thirty (30) pallets on the west side of the parking lot 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.

Eric Burnham seconded. After a roll call vote, the motion carried 3-0, with Jeff Bunge abstaining from the vote.

4. O'Reilly – Developmental Variance

Owner: Howard J. & Susan L. Skorka, Trustees, 15714 Colfax Street, Lowell, Indiana

Petitioner: O'Reilly Automotive Stores, Inc, 233 S Patterson, Springfield, Missouri

Vicinity: 10205 W 133rd Avenue, Cedar Lake, Indiana

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title XIII – Community Business (B-2) Zoning District, Section 5: Area, Width and Yard Regulations: B. Front Yard: There shall be a front yard between the building line and the highway line and the highway or street right-of-way lines as follows: 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; **and** C. Side Yard: 2) On a lot abutting a Residential Zoning District, or more restrictive Zoning District, there shall be a side yard abutting such district having a width of not less than twenty-five (25) feet, which shall be effectively screened from abutting lots by a strip of planting not less than eight (8) feet in ultimate width...; **and** Title XXII, Section 3: Signs in Business or Industrial Districts, A. The following regulations shall apply for signs in Business or Industrial Districts: e. No portions of any sign which shall include permanent or temporary signs shall be placed within ten (10) feet of a right-of-way or highway or located as to project into same; **and** Section XXVII – Off-Street Parking and Off-Street Loading, Section 4: Off-Street Parking: L. Handicapped Parking: 1) Handicapped parking spaces shall be equal or exceed the area standards set forth previously.

*Petitioner is requesting a Developmental Variance to allow parking within the required fifty foot (50') setback; **and** to allow a side yard of less than the required twenty-five (25) feet; **and** to allow a sign within the required ten (10) foot setback; **and** to allow handicapped parking spaces less than the required area of ten by twenty (10x20) feet. The handicapped spaces will equal an area of eight by twenty (8x20) feet, with a common area between them with an area of eight by twenty (8x20) feet.*

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

Petitioner's Response: Miles Gatland was present at tonight's meeting on behalf of O'Reilly Automotive Stores. Mr. Gatland stated that O'Reilly is proposing a 6,400 square foot retail store. Parking will be along the front and side of the building. Parking would not be provided in the rear of the building, as there is an existing detention pond behind the building. Mr. Gatland also stated that O'Reilly is also requesting that the ninety (90) day requirement be waived until the property is actually obtained by O'Reilly. The sign will be in the same place as the existing, and will be illuminated, but not digital.

Remonstrators: None.

Building Department's Comments: Ian Nicolini suggested that the proposed handicapped parking spaces would not be in accordance with Americans with Disabilities Act (ADA) standards. Mr. Nicolini stated that the parking spaces should be shifted so that the handicapped spaces can be widened and therefore comply with ADA standards. Mr. Gatland withdrew his request for the variance for the

handicapped spaces. Ian Nicolini stated that the existing sign is currently in the right-of-way, which was allowed during the expansion of 133rd Avenue.

Board's Discussion: Tim Kubiak inquired about semi access. Mr. Gatland stated that semi access has been accounted for in the site plan. Discussion occurred regarding the side yard. After review, it was decided that a side yard variance was not actually needed. Originally, the adjacent lot was going to be rezoned to RT, which requires a smaller setback, but the variances can be approved as presented.

Board's Decision: Tim Kubiak moved to approve the variance as presented and to waive the ninety (90) day requirement to the Petitioner, 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 4-0.

5. Lighthouse – Developmental Variance

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

Vicinity: 7501 Constitution Avenue, Cedar Lake, Indiana

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title XII – Neighborhood Business B-1 Zoning District, Section 5: Area, Width and Yard Regulations: B. Front Yard: ... There shall be a front yard between the building line and the highway line and the highway or right-of-way lines as follows: 4) All other streets, a distance of thirty (30) feet; **and** C. Side Yard: 2) On a lot abutting any Residential Zoning District, there shall be a side yard abutting such Zoning District having a width of not less than twenty (20) feet...

Petitioner is requesting a Developmental Variance to allow a front yard setback of approximately fifteen feet (15') and a side yard setback on the north side of the lot of less than five feet (5').

Attorney to Review Legals: Attorney Tim Kuiper stated the notices and publications are in order for tonight's hearing. Attorney Kuiper stated that the Plan Commission approved this item, contingent upon BZA approval.

Petitioner's Response: Les Dewes was present tonight on behalf of DJ Cedar Lake to request a setback variance for an outdoor kitchen. Mr. Dewes stated they would like to move the building as close to the building line as they can, which would be within five feet (5'), in order to preserve the view of the lake coming down Constitution Avenue.

Remonstrators: None.

Building Department's Comments: Ian Nicolini stated that the front yard setback is being requested because the area technically fronts on Constitution Avenue.

Board's Discussion: Tim Kubiak stated that the Plan Commission requested that the kitchen be moved to the north toward the property line in order to preserve the view of the lake and gazebo coming down Constitution Avenue.

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

Diane Cusack seconded. After a roll call vote, the motion carried 4-0.

Correspondence: None.

Public Comment: None.

Adjournment: Meeting was adjourned at approximately 7:53 p.m.

Press Session: None

Diane Cusack

Tim Kubiak

Eric Burnham

Jeff Bunge, Vice Chairman

Jeremy Kuiper, Chairman

Attest: _____
Jenn Montgomery, Recording Secretary