

Town of Cedar Lake – Board of Zoning Appeals
Public Meeting Minutes
October 11, 2012

The Cedar Lake Board of Zoning Appeals held their Public Meeting on Thursday, October 11, 2012. The meeting was called to order at approximately 7:04 p.m. at the Cedar Lake Town Hall. Those Members present were: Eric Burnham, Diane Cusack, Tim Kubiak Jeff Bunge, Vice Chairman, and Jeremy Kuiper, Chairman. Attorney Tim Kuiper, of Austgen, Kuiper & Associates, Building Commissioner Jack Slager, and Jenn Montgomery, Recording Secretary, were also present.

Minutes: Motion by Eric Burnham and seconded by Jeff Bunge to approve the minutes of the September 13, 2012 public meeting. After a voice vote, the motion carried unanimously.

Public Hearings:

Old Business:

1. Pritt – Developmental Variance

Owner/Petitioner: David Pritt, 12704 Webster Street, Cedar Lake, Indiana 46303

Vicinity: 12704 Webster Street, Cedar Lake, Indiana 46303

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title VIII – Residential (R-2) Zoning District, Section 4: Area, Width and Yard Regulations: C. Side Yard: On each lot, except as otherwise specified, there shall be two (2) side yards, each having a width of not less than eight (8) feet...; **and** Petitioner is requesting a Developmental 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 on not less than twenty-five percent (25%) of the area of the depth of the lot; **and** Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title VIII – Residential (R-2) Zoning District, Section 4: Area, Width and Yard Regulations: E. Building Coverage: Not more than twenty-five percent (25%) of the area of the lot may be covered by buildings and/or structures.

Petitioner is requesting a Developmental Variance to allow an eighteen by thirty (18x30) foot deck within the required side yard setbacks, within the required rear yard setback of twenty-five (25) feet and to allow more than twenty-five percent (25%) lot coverage. The proposed deck will have side yard setbacks of less than eight (8) feet on either side, a rear yard setback of approximately fifteen and one-half (15.5) feet and lot coverage totaling approximately thirty-five percent (35%).

Attorney to Review Legals: Attorney Tim Kuiper stated this item was properly advertised at last month's hearing and has been properly continued to tonight's meeting.

Petitioner's Comments: Not present.

Board's Decision: Motion by Eric Burnham and seconded by Diane Cusack to defer this item to the next public meeting. After a voice vote, the motion carried 5-0.

2. Luke Oil – Developmental Variance

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

Vicinity: 7101 W 133rd Avenue, Cedar Lake, Indiana 46303

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title XXII – Sign Regulations, Section 3: Signs is Business or Industrial Districts: A.1. No more than two (2) on-premise signs shall be allowed on a zoning lot; **and**

Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title XXII – Sign Regulations, Section 3: Signs is Business or Industrial Districts: A.1.c. The maximum sign sizes shall not exceed: ii. In the case of two (2) such on-premise signs, one (1) sign shall be no more than sixty (60) square feet in size and one (1) sign shall be no more than thirty-two (32) square feet in size.

Petitioner is requesting a Developmental Variance to allow more than the permitted two (2) on-premise signs. Petitioner is requesting a total of five (5) on-premise signs, four (4) of which will be on the building and one (1) freestanding sign. The proposed freestanding size will be a total size of approximately one hundred fifty (150) square feet. The proposed building signs will range from approximately thirty-six (36) square feet to approximately sixty (60) square feet.

Attorney to Review Legals: Attorney Tim Kuiper stated this item was properly advertised at last month's hearing and has been properly continued to tonight's meeting.

Petitioner's Comments: Mike Zell of Luke Land, LLC stated that there will only be three (3) signs on the building, rather than the submittal of four (4). There will be one (1) freestanding sign, which will be approximately one hundred thirty (130) square feet in size. Mike Zell stated that the "\$5 Car Wash" sign will not be included, as this particular facility does not have a car wash. The other signs in the sign package will be as presented.

Remonstrators: None.

Building Department's Comments: None.

Board's Discussion: Jeff Bunge asked where the freestanding sign will be located. A site plan was provided showing the location. Attorney Tim Kuiper stated the location of the freestanding sign was approved at the Plan Commission level during the site plan approval stage.

Board's Decision: Motion by Tim Kubiak to grant the variance, 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. Dolder – Developmental Variance

Owner/Petitioner: Michael & Marilyn Dolder, 13 Hawthorne Place, Crown Point, Indiana

Vicinity: 13900 Huseman Place, Cedar Lake, Indiana

Request: Petitioner is requesting a Developmental 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; **and** 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 (8000) square feet for a single-family dwelling, and a lot width of not less than eight (80) feet at the building line shall be provided; **and** Title VIII – Residential (R-2) Zoning District, Section 4: Area, Width and Yard Regulations: B. Front Yard: ... There shall be a front yard between the building line and the highway and street right-of-way line as follows: 4) On all other streets, a distance of thirty (30) feet; **and** Title XXI – Fence Regulations, Section 1:B. Fences shall not be allowed in front yards, except: 1) Residential area 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.

Petitioner is requesting a Developmental Variance to allow a new home with a proposed height of thirty-two (32) feet at the peak, to allow a lot width of approximately ten (10) feet, to allow a front yard setback of approximately twenty (20) feet and to allow a fence along the front yard property line.

Attorney to Review Legals: Attorney Tim Kuiper stated this item was properly advertised at last month's hearing and properly continued to tonight's meeting.

Petitioner's Comments: Attorney Jim Wieser was present tonight representing Michael and Marilyn Dolder. Attorney Wieser noted that there was a number of remonstrators at last month's meeting. Attorney Wieser stated that he and his client went back to the surveyor to revise the site plan in order to address the concerns of the remonstrators. This revised site plan was provided to the Board and those present in the audience. The legal description was revised to describe just one (1) lot. Attorney Wieser addressed the concerns regarding public safety and restrictions of future use. There were concerns of extending 139th Avenue all the way to the lot owned by the Homeowners Association. Concerns were also stated regarding access for emergency vehicles to the lot. Residents also stated concerns regarding the relocation of the NIPSCO pole. Under the revised site plan, the road will be extended as a narrow, private drive, which will curve into the lot. An easement will be granted from Lot 7, also owned by Mr. Dolder, in order to widen the drive. This design will allow any size emergency vehicle to access the property. With this

narrow drive, people may be less likely and unable to drive all the way to the beach. The NIPSCO pole will be moved five (5) feet to the east. This pole will also act as a barrier between the new driveway and the pedestrian entrance to the beach. Attorney Wieser stated the next concern that was raised by the residents was the loss of sight to the lake. Attorney Wieser stated that the hill on 139th Avenue will be graded, which will help increase the view for some from 139th Avenue. The proposed house will have a roof height which is lower than the rest of the house in the hope of reducing the impact to surrounding residents. This is also the reason the Petitioner is requesting to move the proposed house ten (10) feet to the north. Attorney Wieser then addressed the fence on the north side of the property. Attorney Wieser stated that this fence is existing and the request is only to replace it. This would also be safer to the community, as it borders the home and property from the public beach. The fence will remain four (4) feet, although the request was advertised as six (6) feet. Attorney Wieser stated he and his client feel that these changes should satisfy at least some of the residents who expressed concern at the last meeting.

Remonstrators:

Against:

Becky Davis, 8504 W 139th Avenue; Ms. Davis questioned what the road/driveway will look like. Will the private drive be on a public road? Attorney Kuiper stated that the only part of the drive that will be private is what is constructed on private property. Anything that is developed on the public right-of-way will be public. The Board showed Ms. Davis what portion of the drive would be considered public. Ms. Davis stated the Comprehensive Plan states that a goal of the Town is to prevent obstructing lake views; is this no longer true?

Ken Wilkening, 13853 Huseman Street; Mr. Wilkening asked if the whole hill will be cut out going down 139th Avenue. The Petitioner stated yes. Mr. Wilkening asked what would happen to the fence on the homeowners' association property. Building Commissioner Jack Slager stated that the driveway cuts into the property before the property line and fence, so they will not be affected. Mr. Wilkening stated that there is a retaining wall on the south side of the drive, but what will hold it up on the north side, as there is a light pole on the north side. Jack Slager asked Mr. Dolder if there will be a retaining wall on the north side or what his plans are for that side? Mr. Dolder stated that the subdivision fence is actually in the public right-of-way and that he will have to grade the area. Once that is complete, the fence will be restored. Mr. Wilkening asked if they are obligated to remove their fence to allow Mr. Dolder to grade the hill. Attorney Kuiper stated that if the fence is in the right-of-way, then he can move it to do whatever the Town Engineer directs him to do.

Lynn Conroy, 13908 Huseman Street; Ms. Conroy stated she lives next to Mr. and Mrs. Dolder's existing home. Ms. Conroy stated that the existing home should be torn down if a new home is going to be built on the other lot and that lots six and seven (6 & 7) be used for the driveway. Ms. Conroy stated concerns of the property being completely fenced in and the safety issues of that in case of an emergency. Ms. Conroy stated she has not had enough time to review and process the revised plan, as she was given a copy right before the meeting, which isn't fair.

Phil Rietveld, 13920 Huseman Place; Mr. Rietveld stated that the private drive is still going to be on a public road. The proposed house is going to take away two-thirds (2/3) of his lake view. Mr. Rietveld stated that Mr. Dolder should just add on to his existing home instead of building a new home. By doing this, no one's view would be affected.

Antoinette Lejeune, 13905 Huseman Street; Ms. Lejeune stated she owns Lots eight through eleven (8-11). Mr. Lejeune stated she bought her home because of the view. Ms. Lejeune stated she was told by her realtor that she will lose twenty percent (20%) value on each lot if the view is taken away. A home that is thirty-two (32) feet will take even more value away from her property.

Petitioner's Response: Attorney Jim Wieser stated that the proposed home is being proposed on a vacant lot. There is currently no structure on the lot. If Attorney Wieser's client wanted to build a house that conformed to the current zoning standards, then they could without going for any variances. Attorney Wieser stated that the home his client lives in currently is on a completely different lot. The reason for the variance request is mainly to try to accommodate his neighbors. Attorney Wieser reiterated that he nor his client have ever met with any members of the Board of Zoning Appeals outside of last month's meeting and tonight. Attorney Wieser stated he and his client have only met with Town staff, which is typical. This is done in order for staff to understand what plans are being proposed and to make sure that everything is done in legal and proper order. Attorney Wieser addressed the fence concerns and stated that the subdivision fence will be restored to its current

condition. Attorney Wieser stated that a fence will not be installed around the entire property. The only fence will be along the north side of the property, which already exists.

Building Department's Comments: Jack Slager asked what material the proposed driveway will be made of. Mr. Dolder stated that it will be asphalt.

Board's Discussion: Diane Cusack asked about the deck on the existing home, as the size is different on the revised site plan. Mr. Dolder stated that he is going to reduce the size of the deck to allow room for the proposed driveway. Diane Cusack asked about what would happen if Mr. Dolder sold his existing home. Attorney Kuiper stated that an easement will be granted to the other lot to allow access to the proposed home. Discussion occurred regarding the fence. Mr. Dolder stated that part of the fence will be removed to allow access to the property for construction, as well as for the driveway. The variance for the fence was only advertised for six (6) feet to allow the change if desired. However, the fence is currently four (4) feet tall and will remain that height after construction. Tim Kubiak stated that the ordinance states that a home must front on a dedicated and improved street. Tim stated that he has no problem with an easement being granted, but that 139th Avenue should be improved. Attorney Kuiper stated that technically, there is an improvement to a portion of the road, but it is all subject to approval. Tim Kubiak stated concerns about people parking on the improved, public portion of the driveway, which would block access to the home. After listening to the reasons in requesting the twenty (20) foot front yard variance, Tim Kubiak stated he agrees with the request. Tim Kubiak stated he doesn't see any reason why the house cannot be built with a thirty (30) foot height. The roof pitch would only need to be changed slightly. Eric Burnham stated that only improving a portion of the road will cause more problems than if the whole road was to be improved. Attorney Wieser stated that his client has no problem improving the entire road, as that was part of the original plan. Discussion occurred that a combination of improving the road all the way and granting an easement would be preferable. Diane Cusack stated that she does not like the proposed driveway being so close to the existing home. Tim Kubiak asked if the Board can give approval for the road improvement. Attorney Kuiper stated the road is extended in the same manner that it currently exists, which is stated in the code book. Discussion occurred regarding what is actually being requested by the Petitioner, which includes the height of the house, the front yard fence and a front yard setback.

Board's Decision: Jeremy Kuiper stated that the Board will only vote on the variances that have been requested. This Board cannot tell the Petitioner what to do with an existing home on a separate lot, but only vote on what has been requested. The Board will vote on three (3) different motions for each request.

Motion by Tim Kubiak and seconded by Diane Cusack to deny the request for a height of thirty-two (32) feet at the peak. After a roll call vote, the motion carried 5-0.

Motion by Tim Kubiak and seconded by Jeff Bunge to grant the variance to allow a front yard setback of twenty (20) feet, 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.

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

Motion by Tim Kubiak and seconded by Diane Cusack to grant the variance to allow a fence on the front yard property line, 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.

After a roll call vote, the motion carried 4-1, with Jeff Bunge voting against.

Public Comment:

Becky Davis, 8504 W 139th Avenue; Ms. Davis stated she understands that the road will be improved all the way down and that traffic barriers will be installed. Who is responsible for putting those in? Attorney Kuiper stated that the Town will have requirements that will need to be met. The Petitioner will be responsible for installing the barriers and the Town will inspect same to make sure everything is done properly.

Ken Wilkening, 13853 Huseman; Mr. Wilkening stated that these barricades will need to be removable. Mr. Wilkening asked if these barricades will be able to hold back a car. Attorney Kuiper stated that the barricades will have to meet the recommendation of the engineers and conform to the design standards manual. Mr. Wilkening asked if they are obligated to give Mr. Dolder access to their property for construction of the new home. Attorney Kuiper stated he cannot trespass on private property. However, Mr. Dolder can allow himself as much room on his second lot as he wants.

Lynn Conroy, 13908 Huseman Street; Ms. Conroy thanked the Board for taking the time to address the concerns of the residents and addressing the flaws in the proposal.

Antoinette Lejeune, 13905 Huseman Street; Ms. Lejeune stated concerns of the evergreens along her property. After review, the Board stated that construction will not be near the trees, and that her property should not be affected.

Adjournment: Meeting was adjourned at approximately 8:30 p.m.

Diane Cusack

Tim Kubiak

Eric Burnham

Jeff Bunge, Vice Chairman

Jeremy Kuiper, Chairman

Attest: _____
Jenn Montgomery, Recording Secretary