



**TOWN OF CEDAR LAKE
BOARD OF ZONING APPEALS PUBLIC MEETING
MINUTES
September 14, 2017 7:00 P.M.**

Call to Order (Time): 7:05 p.m.

Pledge to Flag:

Roll Call:

Present Nick Recupito

Present Jerry Wilkening

Present John Kiepura

Present Jeremy Kuiper

Present Jeff Bunge

Present David Austgen, Town Attorney

Present Tim Kubiak, Director of Operations

Present Michelle Bakker, Building Administrator

Present Tammy Bilgri, Recording Secretary

Minutes:

A motion was made by John Kiepura and seconded by Jeff Bunge to approve the August 10, 2017 Public Meeting Minutes as presented.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Yes	Yes	5-0

Old Business:

1. Nathan Bapple-Developmental Variance

Owner: Nathan Bapple, 7807 W. 127th Ave., Crown Point, IN 46303

Petitioner: Homes By Dutch Mill, 14795 W. 101st Ave., Dyer, IN 46311

Vicinity: 7807 W. 127th Ave., Cedar Lake, IN 46303

Legal Description: PT. SW NW S.23 T.34 R.9 (53.65x165ft) 0.306 AC. M/L

Tax Key Number(s): 45-15-23-154-012.000-043

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title VIII-Residential (R-2) Zoning District; Section 4: 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 the aggregate width of both side yard on any lot shall not be less than twenty percent (20%) of the width of the lot.

This Developmental Variance is to allow the Petitioner to build a new home with a side yard setback of 6.28 ft.

Deferred from August 10, 2017 Public Meeting

- a) Attorney to Review Legals: Properly continued.
- b) Petitioner's Comments: Doug Kvachkoff, attorney for Mr. Bapple. After the last meeting, we have started the process for a 1-lot subdivision.
- c) Remonstrators: None
- d) Building Department's Comments: Tim Kubiak stated it came up at the last meeting, it is a metes and bounds parcel. They do have a narrow fifty (50') ft. lot and they are requesting the 6.28 ft. side yards. Next month they will be here for a fifty (50') ft. lot frontage on this new lot they are proposing because our R-2 requirements is a ninety (90') ft. lot and their square footage is a little below the 10,000 square feet. Have to have a preliminary plat next week and then the final plat at the next Plan Commission meeting. Also included the side yard setback on the next variance in case something changed with the lot after the subdivision.
- e) Board's Discussion: None

A motion was made by Jerry Wilkening and seconded by Nick Recupito to approve the Developmental Variance as presented and to include the findings of fact.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Yes	Yes	5-0

2. Don Frey-Developmental/Use Variance

Owner: Don Frey, 14527 Lake Shore Drive, Cedar Lake, IN 46303
Petitioner: Don Frey, 332 E. 125th Pl., Crown Point, IN 46307
Vicinity: 14527 Lake Shore Drive, Cedar Lake, IN 46303
Legal Description: SOUTH SHORE SUB. L.1 & 2
SOUTH SHORE SUBDIV W100FT OF LOT "A" E1/2 VAC ST
Tax Key Number(s): 45-15-35-304-001.000-043
45-15-35-301-001.000-043

Request: Petitioner is requesting a Developmental Variance/Use Variance from Zoning Ordinance No. 496, Title XIII: Community Business (B-2) Zoning District: Section 2: Use Regulations; Title XXIII-Accessory Regulations: Section 1: B. Accessory buildings intended for business or industrial purposes and located in Business Zoning Districts shall be allowed, provided they conform to all height, setback, yard and lot coverage requirements of the Zoning District they are located.

This Developmental Variance/Use Variance is to allow the Petitioner to build a structure ten (10') from side property line and twenty-five (25') feet from front property line to accommodate two (2) businesses. One half for renting paddle boards and kayaks and one half for selling bottled beer, wine, soft drinks and water

Deferred from August 10, 2017 Public Meeting

- a) Attorney to Review Legals: Properly continued.
- b) Petitioner's Comments: Don Frey, 332 E. 125th Pl., Crown Point, IN. Would like to build a 10'x16' structure on the lake front property for kayak and paddle board rentals and for the sale of bottled and canned alcohol and beverages. Thinks this would be a safer way of doing business. Meet all parking requirements, plan on paving parking lot in near future. This would be during day light hours only. Building would be on a concrete slab. This will operate as more of a concession stand, no customers will be entering the building. Planning on having some tables outside with umbrellas. Inside is for the storage of beverages and the equipment. Will not be serving drinks, just purchase packaged liquor. Customers are not allowed to carry open beverages across the street. Customers are allowed to consume the beverages on his property.
- c) Remonstrators: Michael Toth, 14605 Lee St., president of South Shore Association Subdivision the adjacent property with ninety-seven (97) residents. **Letter Attached.** Concerns with alcohol being served next to a park, how can serve alcohol with kids renting kayaks. Have a lot of trespassing from his property coming into their park. Would like to keep property values up. Concerns for foot traffic at that corner. Referred to Indiana Code 36-7-4-918-4. David Austgen stated the Board knows the five (5) criteria for approval or denial for a Variance of Use under Indiana law, it is codified into their zoning ordinance. We look at them every month. It is a mutual burden to prove, if you are opposing it, it is your burden to show those criteria are not met. His burden is to show those criteria have been met.
Erin Gluth, 14530 Blaine St., her great grandfather, Henry Gluth, incorporated the South Shore Subdivision. Would ask if it does pass, that when they sign out kayaks it be noted they are private property and put some signs up. If he would update his beach, maybe his clients would stay off their beach. Concerns with alcohol and kayaks.
Pam Mehok, 8000 W. 156th Pl., one (1) of four (4) owners. Shocked this is even being considered. I think that not one of you would want to be ten (10') feet from the alcohol. He has no more room to park boats, they are in front of our place. Love Cedar Lake and like his restaurant, just don't want beer and alcohol near her grandkids. Concerns with boat traffic and swimming areas. The Board answered the Town does not have jurisdiction over the water.
Evangeline Schmeltz, 14726 Bryan St. Has lived there for almost forty (40) years. Very concerned because their subdivision has worked very hard to keep up their property. Concerns with swimming area and boats cutting across to park at the pier, to go get liquor. Have seen them sit in our area drinking. Private property, membership only, they are trespassing. Knows we have no jurisdiction over the lake, but once they hit land we do. Not enough parking. Traffic goes up and down side streets at all hours trying to avoid getting pulled over by the police. Does not want the children exposed to the alcohol while on the playground.

Bob Vanramshorst, 14507 Lake Shore Dr., likes having Bugaboos there. Mr. Frey has done a good job starting a business there. Very afraid of having the area hurt. This week had a car take off from Bugaboos and hit the culvert in front of my house and took out my mailbox and hit the telephone pole across the street. My wife was out in the yard at the time. If it goes there want to make sure we aren't taken advantage of. Several times a week people come across and use our private property. We are responsible for that property. Knew there would be a business there. Nothing has been done to help protect us on our side of the fence. Jeremy Kuiper stated should contact the DNR for legal action on the lake. David Austgen asked when the property damage incident happened and if the police were called. Mr. VanRamshorst stated yes an incident report was filed.

John Dessauer, 13125 Polk, is for this project. Thinks a lot of things talked about tonight has been about alcohol and children. Does not think there has been one (1) incident since Mr. Frey has opened Bugaboos with serving underage minors. Does not even think the police have had to write any reports. Would argue it is a safer environment to eliminate foot traffic along that road. Mr. Frey has probably done more for the South Shore Subdivision from a business perspective than any other business in this town. That property has five lots in the subdivision itself. Trespassing and alcohol on the street is a police problem. The other things are an excise problem or DNR problem. The alcohol is there right now and it is up to the adults to be adults about it, if not they have to face the consequences. It is also the responsibility of the kayakers. As drove by tonight, wanted to see the property lines and we want to make sure the children are safe. That buoy they talked about is probably in Mr. Frey's riparian rights where those children swim and that could be why you see some of those boats cut across. In support of it and just ask you to consider those things.

Bill Keen, 14334 Lake Shore Dr., supports Mr. Frey's effort. Thinks it is a good idea. Understands peoples concerns.

Jerry DeBoer, 8108 W. 146th Ave., It is a residential area, the business there has been grandfathered and been there a long time. The intersection is dangerous. A lot of surprises coming around the corner. Makes no sense to expand a commercial business at that location when we know it is a dangerous intersection and residential area. Why make it easier for the boaters to get alcohol. Does not believe it will eliminate any issues.

Denise (in audible), 14734 Lee St., concerns with the amount of motorcycles and safety. Too much traffic already.

Dan Gillim, 14612 Dewey St., Probably most effected by everything that goes on at Bugaboos. Everything since they have come in has been positive. Mr. Frey has made everything beautiful. Has increased the value of my house. Is for this.

Ellen Heimann, 8004 W. 146th Ave., can't imagine that any of you will think your property will go up. Will have additional noise, will be needing parking. The lots are full now. Yes he has done a nice job building things there, but it is very noisy. Concerns with town noise ordinance and parking ordinance. Has contacted the DNR with concerns. So noisy can sit in bed and sing karaoke with them. The residents used to be able to enjoy the area, would be more than happy for you to come to her house and enjoy the entertainment with her. Jeremy Kuiper stated Mr. Frey does have a Variance to have these fully amplified events. Wanted to know if we have any information on what size and height this building is going to be, do we know the setbacks. Mr. Kubiak stated we have all that information. Jeff Bunge showed her the paperwork with the information. Asked questions about hours of operation. Questions about the process of a variance and how long before meeting residents are notified.

Ronald Vincent, 14617 Cline, does not have a problem with the variance, but concerns with the garbage. Always ends up in his yard.

Mike Toth, questions on if parking can be gravel or needs to be paved. Tim Kubiak stated this parking lot was grandfathered in. He does have plans to pave the lot. A new business would need to have paved parking.

Keith Piszro, representing his mother at 145th & Lakeshore Dr., whatever decision you make does not stop here, they have to go through Lake County Board and the State Board. The DNR has more to say than just on the water, they also go on land. Lake County could shut it down.

Mr. Frey stated this was an abandoned building, have done some good things for this area. As far as the trespassing goes, I have people park at my business and go to their park. This has been zoned business for forty (40) years. There is a fence with signs on it and we have no use for that park and have tried to be respectful of the neighborhood. Also on numerous occasions there is drinking and bands at their park. We are allowed two (2) fully

amplified music events a month for the summer months. The beach and playground are on the far side from his property. The buoys are way out at the end of the pier, after talking to DNR the buoys are out there too far. Will not pay people to sit there all day waiting for people, will be limited hours. Discussion on parking ensued.

- d) Building Department's Comments: Tim Kubiak stated Mr. Frey has been to the Plan Commission and had a site plan approved last month. He was deferred last month to see what the Plan Commission would decide. The Plan Commission viewed it as a recreational use of the lake. During the road improvements in that area, there is talk of straightening that corner out and putting a stop sign there.
- e) Board's Discussion: Jerry Wilkening stated the Plan Commission discussed the safety of the street. Rent them from the south side so people are not dragging them back and forth across the street. He can sell alcohol; he has a carry out license. Jerry Wilkening also brought up if there were plans with the road project to eliminate some of the risk factors. Jeremy Kuiper stated the addition of the crosswalk and directional signs in the parking lot have seemed to help. Also discussed if one piece of property. The Board discussed the safety of boaters crossing the street to purchase alcohol. John Kiepura is concerned with the type of structure. Does not want a business to operate out of a garden shed. No foundation with electricity. Jeremy Kuiper expressed concern with boat traffic and parking. Discussion on the boat slips ensued. Nick Recupito asked if there would be electric, refrigeration and if allowed to sell this on Sunday. Mr. Frey stated yes for the coolers and electricity to run the computers. Cannot sell carry out on Sunday, but can sell for consumption. David Austgen asked Jeremy Kuiper if he wanted to state to the Board the case of Riverside vs. Jeffersonville, the necessity of detailing the supportive aspects of the findings that need to be made. Jeremy Kuiper stated what Mr. Austgen is speaking of is the findings of fact you heard Mr. Wilkening say at the end of our recommendation or decision, those need to be read out loud for everyone to hear. Those findings of facts are as follows:
1. The approval not be injurious to the public, health, safety, morals and general welfare of the community. 2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. 3. The need for variance arise from some condition peculiar to the property involved. 4. The strict application of terms from the zoning ordinance as amended from time to time will constitute unnecessary hardship if applied to the property which the variance is sought. 5. The approval does not interfere substantially with the comprehension master plan of the town. David Austgen also stated that in addition to that, you cannot under the new law make generic reference to those statutory findings. You have to identify the facts, evidence or the basis you find from the completion of the hearing, what supports each of your findings. The reason has to do with the mandate of the Indiana Code that we read every month and the court ruling here ratifying the Supreme Court Decision. This is complicated. Need to go through each finding. Jerry Wilkening stated he feels it is reducing the risk factor of crossing the street in part. Discussion on how to proceed ensued. 1. Public safety will be enhanced. 2. The values have not changed to the adjacent property. 3. The need for the variance is the road separating the parcels. 4. The road separating the parcels can be considered a hardship. Discussion on self imposed hardship ensued. David Austgen stated there are three points to discuss for the Developmental Variance. Jeremy Kuiper stated 1. The approval will not be injurious to the public health, safety morals and general welfare of the community. 2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantial adverse manner. 3. The strict application of terms of the zoning ordinance is amended from time to time will result in practical difficulties in use of the property.

A motion was made by John Kiepura and seconded by Nick Recupito to deny the developmental variance as presented per findings of fact, 1. It will be injurious to public because crossing of the street with kayaks and park next door. 2. Will affect in an adverse manner properties around there. 3. Will not adhere to all our zoning and ordinance requirements.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	No	Yes	Yes	No	3-2

A motion was made by Jerry Wilkening and seconded by Jeremy Kuiper to send a favorable recommendation to the Town Council for two businesses one renting kayaks

and paddle board and the other for selling bottled beer, wine, soft drinks and water and to include the findings of fact as stated above. Motion fails

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
No	Yes	No	No	Yes	3-2

A motion was made by Jeff Bunge and seconded by John Kiepura to send an unfavorable recommendation to the Town Council, including these findings of fact. Believes it will be injurious to the safety of the community, the use and value of the area adjacent to this property will be affected in an adverse manner, no problem with master plan, does not constitute any hardship for the property.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	No	Yes	Yes	No	3-2

New Business:

1. Katie Powers-Developmental Variance

Owner/Petitioner: Katie Powers, 15003 Ivy St., Cedar Lake, IN 46303
Vicinity: 15003 Ivy St., Cedar Lake, IN 46303
Legal Description: Lynnsway Unit 3 Lot 153
Tax Key Number(s): 45-19-04-230-007.000-057

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title XXI-Fence Regulations; A. 1) No fence shall be located in the front yard

This Developmental Variance is to allow the Petitioner to have a six (6') ft. fence in a front yard

- a) Attorney to Review Legals: David Austgen stated legals are in order.
- b) Petitioner's Comments: Katie Powers, 15003 Ivy St., would like to put a fence in what is considered her front yard.
- c) Remonstrators: None
- d) Building Department's Comments: Tim Kubiak stated this is consistent with Lynnsway Subdivision, on a through lot that has two (2) front yards.
- e) Board's Discussion: None

A motion was made by Jerry Wilkening and seconded by Jeff Bunge to approve the Developmental Variance as presented and to include the findings of fact.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Yes	Yes	5-0

2. Sandra & Joseph Herman-Developmental Variance

Owner/Petitioner: Sandra & Joseph Herman, 11034 Major Ave., Chicago Ridge, IL 60415
Vicinity: 7429 W. 136th Ct., Cedar Lake, IN 46303
Legal Description: PT. SE. NW. S.26 T.34 R.9 .112A. 50X83X83.48X--X96X31X--FT.
Tax Key Number(s): 45-15-26-185-003.000-043

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, there shall be two (2) side yards, each having a width of not less than eight (8) feet

This Developmental Variance is to allow the Petitioner to have a side yard setback of one (1') foot for a deck addition

- a) Attorney to Review Legals: David Austgen stated the legals are in order a public hearing may be conducted. There are several green cards missing any action taken should be on the receipt of the green cards.
- b) Petitioner's Comments: Sandra Herman, 7429 W. 136th Ct., would like to extend her current deck four (4') ft.
- c) Remonstrators: Cheryl Parker, 7227 W. 136th Ct., did write a letter. Discussion on fence on adjacent property and access. Several homeowners are concerned with future fence that are looking into putting up. If the deck goes that close to the property line will the fence be denied in the future.

Jeremy Kuiper read remonstrator letters into the record. (Attached)

- d) Building Department's Comments: Tim Kubiak stated has a unique piece of property here. Next to the public subdivision lot which is on the lakefront. She did not have a survey, but went and got one. So now you can see she currently has an eight (8) or nine (9) ft. deck along there and she is asking to make it four (4) ft. bigger. Right now has a five (5) ft. setback from the property line. The deck is currently non compliant should have eight (8) ft.
- e) Board's Discussion: Discussion on the lot owned by the HOA. John Kiepura asked if there was a fence, petitioner stated no. John Kiepura stated concerns with the access to the rear of the property if they have a one (1) ft. side yard. Discussion ensued on if there is access to the rear of the property. Mrs. Herman stated she is the president of the association and she has never heard of proposed fence. Stated she has access around her whole house. Questions about distance between house and shed on the property. Continued discussion on access for emergency vehicles. Jerry Wilkening stated there is four (4') ft. between the shed and the house, thirteen (13') inches between the deck and property line. Tim Kubiak stated the other side of the shed is on the line. Discussion on shed location ensued.

A motion was made by Jerry Wilkening and seconded by Nick Recupito to deny the Developmental Variance as presented due to it will affect the adjacent property and affect in a negative way practical use of the property and to include the findings of fact.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	No	Yes	4-1

3. Accent Homes-Developmental Variance

Owner/Petitioner: Accent Homes, Inc., 2036 W. 81st Ave., Merrillville, IN 46410
Vicinity: 10016 W. 128th Ave., Cedar Lake, IN 46303
Legal Description: Monastery Woods Phase 1 Lot 176
Tax Key Number(s): 45-15-21-253-022.000-014

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title VIII-Residential (R-2) Zoning District; Section 5: Building Size; B. Attached Garages: Attached garages on all new home permits shall have maximum garage size of eight hundred sixty-four (864) square feet.

This Developmental Variance is to allow the Petitioner to build a new home with an attached three (3) car garage of nine hundred twenty (920) square ft

- a) Attorney to Review Legals: David Austgen stated the legals are in order, one (1) green card to come back. Public meeting may be held.
- b) Petitioner's Comments: Wes Morin, Accent Homes, looking to increase the maximum square footage for an attached garage in Monastery Woods.
- c) Remonstrators: None
- d) Building Department's Comments: Tim Kubiak stated they have actually asked for and received this same variance in the same subdivision on two (2) other occasions. Will still have thirteen (13') ft. side yard setbacks and plenty of lot to achieve this.
- e) Board's Discussion: None

A motion was made by John Kiepura and seconded by Jerry Wilkening to approve the Developmental Variance as presented and to include the finding of facts.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Yes	Yes	5-0

4. Phillippe Builders-Developmental Variance

Owner/Petitioner: Phillippe Builders, 3500 Union Ave., Steger, IL 60475
Vicinity: 8312 W. 147th Ave., Cedar Lake, IN 46303
Legal Description: South Beach Sub Lot 3
Tax Key Number(s): 45-15-34-426-022.000-014

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title XV-Planned Resort (RS) Zoning District; Section 3: Height Regulations: The maximum height of any building or other

structures shall be two (2) stories, or not more than thirty (30) feet;
Section 6: Building Size: A. Attached Garages: The maximum size for an attached garage shall be eight hundred sixty-four (864) square feet.

This Developmental Variance is to allow the Petitioner to build a new home with a height of thirty-eight (38') feet and an attached garage of approximately 1,590 sq. ft.

- a) Attorney to Review Legals: David Austgen stated the legals are in order, minus two (2) green cards.
- b) Petitioner's Comments: Robert Phillippe, 8312 W. 147th Ave., looking for a variance for a height of thirty-eight (38') ft. on a home and to build a larger garage.
- c) Remonstrators: None
- d) Building Department's Comments: Tim Kubiak stated they are asking for a height of thirty-eight (38') ft. and a garage of 1,590 sq. ft., which is consistent with the other houses in the neighborhood. Believe most houses are taller than this. No issues with setbacks. The height is generated from the walk out basement.
- e) Board's Discussion: Discussion on how height is measured ensued.

A motion was made by Jerry Wilkening and seconded by John Kiepura to approve the Developmental Variance as presented and to include the findings of fact.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Yes	Yes	5-0

Public Comment: None

Adjournment: Time: 9:34 p.m.

Press Session: Board of Zoning Appeals Meeting – October 12, 2017 at 7:00pm

Nick Recupito

Jeff Bunge, Vice Chairman

Jerry Wilkening

Jeremy Kuiper, Chairman

John Kiepura

Attest: Tammy Bilgri, Recording Secretary

The Town of Cedar Lake is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend this meeting and who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding accessibility of the meeting or the facilities, please contact the Town Hall at (219) 374-7400.