



**TOWN OF CEDAR LAKE
BOARD OF ZONING APPEALS
PUBLIC MEETING MINUTES
December 12, 2019 7:00 P.M.**

Call to Order (Time): 7:01 p.m.

Pledge to Flag:

Roll Call:

Present Nick Recupito

Present Jerry Wilkening

Present John Kiepura

Present Jeremy Kuiper

Absent 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 Nick Recupito to approve the November 14, 2019 Public Meeting Minutes as presented.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Absent	Yes	4-0

Old Business:

1. Ravens - Developmental Variance

Owner/Petitioner: Rory Ravens, 12528 Wicker Ave., Cedar Lake, IN 46303

Vicinity: 12528 Wicker Ave., Cedar Lake, IN 46303

Legal Description: COFHEN BUSINESS PARK

Tax Key Number(s): 45-15-20-227-001.000-014

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title XIV-General Business (B-3) Zoning District: Section 5: 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 fifteen (15) ft., which shall be effectively screened from abutting lots by a strip of planting not less than fifteen (15) feet in ultimate width, such planting consisting of not less than fifty (50%) percent evergreen material scattered throughout.

This Developmental Variance is to allow the Petitioner to place a walk in cooler two ft. (2') off the side property line

Deferred from October 10, 2019

- a) Attorney to Review Legals: David Austgen stated this was properly continued.
- b) Petitioner's Comments: Rory Ravens, 12528 Wicker Ave., asking to put a walk in cooler on the back side of the building.
- c) Remonstrators: None
- d) Building Department's Comments: Tim Kubiak stated there was some previous discussion regarding any easements on the property. The side yard is larger than originally stated. If the cooler was 12'x50' would that

accommodate you for what you needed to do? That would be a five ft. (5') side yard, two ft. (2') is a little distance. Five ft. (5') is much more reasonable. Mr. Ravens stated that could hinder the functionality. There will be someone working in there for four or five hours (4-5). This is not a permanent structure; worse case is having to bust some concrete. Tim Kubiak stated this is a semi-permanent structure and if a need arises to get around that building is still a safety issue, cannot be removed quickly.

- e) Board's Discussion: Jerry Wilkening asked Mr. Austgen if there is any liability to the Town with utilities if he does anything between the building and the property line. David Austgen stated two ft. (2') is a small distance and it is his responsibility. John Kiepura asked if there is any other space to put this, like in between the two (2) buildings. Mr. Ravens stated we are in a situation of trying to figure out if we can stay on this property, need to free up floor space. Looking at an actual six point eighty-four ft. (6.84 ft.) setback with a fourteen ft. (14') cooler. David Austgen stated we have a quality survey for site plan usage for Tim and the team. Two things not on it and might be of use is the landscaping plan or some identification of what that will be and any improvement for ingress/egress on the west side of the building. Need the petitioner to tell us what they want to do, not you do the work for them. Discussion ensued on type of screening. Noise will be minimal. Nick Recupito stated the fence will be on the property line, how far will it go? Tim Kubiak stated the fence should go down the south property line for the length of the building. Mr. Ravens is willing to do whatever is necessary.

A motion was made by Nick Recupito and seconded by Jerry Wilkening to approve a walk in cooler of twelve ft. (12')x no more than sixty ft. (60') on the south side as shown on the survey with a six ft. (6') privacy fence the length of the building and an updated site plan and to include the findings of fact.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	No	Absent	Yes	3-1

2. Allan – Developmental Variance

Owner/Petitioner: Roberta Allan, 8609 W. 131st Ave., Cedar Lake, IN 46303
Vicinity: 8609 W. 131st Ave., Cedar Lake, IN 46303
Legal Description: Meyer Manor BL.1 lots 21,28,29 & W.1/2 lot 30
Tax Key Number(s): 45-15-22-452-016.000-014

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; D. Rear Yard: there shall be a rear yard on not less than twenty-five percent (25%) of the depth of the lot; E. Building Coverage: not more than twenty-five percent (25%) of the area of the lot may be covered by buildings and/or structures

This Developmental Variance is to allow the Petitioner to build a twelve ft. by twenty ft. (12x20) deck four ft. eight inches (4'8") from the side property line and seven ft. one inch (7'1") from the rear property line with lot coverage over twenty-five percent

Deferred from November 14, 2019

- a) Attorney to Review Legals: David Austgen stated this was properly continued.
- b) Petitioner's Comments: Roberta Allan, 8609 W. 131st Ave., was deferred to look for a staked survey, could only find the mortgage survey. Talked about me removing part of the deck and make it parallel to the house. Remonstrators: None
- c) Building Department's Comments: Tim Kubiak stated that normally the mortgage survey for an accessory use is ok. This says seven point forty-five (7.45) on this mortgage survey you are reasonably within, most mortgage surveys are accurate. If you go out and look at her house and measure over it is seven point five ft. (7.5 ft.) it is right there in that parameter.
- d) Board's Discussion: John Kiepura stated we were looking for an updated survey, neighbors concerned with looking in the windows. This is normal for this area. One modification was to keep it in line with the house. Tim Kubiak stated he agrees with keeping it in line with the house. Discussion ensued on accuracy of GIS and survey

A motion was made by Jerry Wilkening and seconded by Nick Recupito to approved a deck seven point one ft. (7.1') from the rear property line and parallel with the east side of the house with lot coverage over twenty-five percent (25%) and to include the findings of fact.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Absent	Yes	4-0

3. MacLean – Developmental Variance

Owner/Petitioner: David MacLean, 133 W. Lakeview Dr., Lowell, IN 46356
Vicinity: 12917 Knight St., Cedar Lake, IN 46303
Legal Description: SHADES ADD. CEDAR LAKE PLAT AA ALL LOT'S 76 & 77, BL.2
Tax Key Number(s): 45-15-23-331-001.000-043

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title VIII-Residential (R-2) Zoning District: Section 4: B. Front Yard: On all other streets, a distance of thirty (30) feet; Section 5: Building Size: A. Minimum footprint for a two-story is eight hundred (800) square feet.

This Developmental Variance is to allow the Petitioner to build a new home with a front yard setback of fourteen ft. (14') and a first floor square footage of seven hundred eighty-seven (787)

Deferred from November 14, 2019

- a) Attorney to Review Legals: David Austgen stated this was properly continued.
- e) Petitioner's Comments: David MacLean, 133 W. Lakeview Dr., Lowell, IN 46356, at the last meeting they asked to see elevations, submitted that to Building Department. Feels like has done the best job he can trying to fit a nice house on the lot.
- b) Remonstrators: Rocco DeLuca, 12923 Knight St., looked back to 1978 on GIS and discussed the road setbacks. If we allow any structure to be built, we are stating we will allow two-way traffic on this very narrow road for a long time.

- c) Building Department's Comments: Tim Kubiak stated have discussed previously the options of building something on this lot and he is fairly realistic of what will fit. This is a challenging area and a good compromise, very close to meeting ordinance. Consistent with the neighborhood. John Kiepura stated building a new home will not make the road situation any worse, it will stay the same.
- d) Board's Discussion: Jerry Wilkening stated this is close to the road, but common in this area. Jeremy Kuiper stated if not this, nothing can be built there. David Austgen asked if there was a house immediately south of lot 76, how far from the property line is this house proposed. Mr. DeLuca stated approximately twenty-five ft. (25'). Michelle Bakker stated because of the road and how it cut into the property is why we made sure that the house was all the way back and the vision triangle was met.

A motion was made by Nick Recupito and seconded by John Kiepura to approved the Developmental Variance to allow the Petitioner to build a new home with a front yard setback of fourteen ft. (14') and a first floor square footage of seven hundred eighty-seven (787) and to include the finds of fact.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Absent	Yes	4-0

4. Precision Property – Use Variance

Owner: Mark Eifel, 16600 Crawford Ave., Country Club Hills, IL 60478
Petitioner: Precision Property, 8520 W. 86th Ct., St. John, IN 46373
Vicinity: 13220 Lindberg Pl., Cedar Lake, IN 46303
Legal Description: Pt. SW.1/4 SW.1/4 S.21 T.34 R.9 1.457 Ac
Tax Key Number(s): 45-15-21-352-013.000-014

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

This Use Variance is to allow the Petitioner to operate two businesses on a lot in a B2 Zoning District an Auto Service Center and Storage for Govert Landscaping

Deferred from November 14, 2019

- a) Attorney to Review Legals: David Austgen stated this was properly continued.
- b) Petitioner's Comments: Mark Eifel 13220 Lindberg Pl., Cedar Lake, IN, and Brian Patrick, 8520 W. 86th Ct., St. John, IN. The petitioner handed out some packets of material to discuss. Made changes based on the previous conversations. To help out with the blocking of traffic on Lindberg Pl. we will move Govert to the back building away from the street. Did watch eight (8) hours of file at current facility to see how many cars come in and out. Mr. Patrick stated there are some drawings of what we would like it to look like, with color schemes, lights and awnings. Lindberg Place parking will be employees and customers, job and Govert parking will be in the back. Four (4) parking spaces will be for Govert. Will leave fourteen (14) for cars we are working on and six (6) customer spots and two (2) employee in the front. Will have six ft. (6') privacy fence, will have seven (7) bays. All excavating equipment will be gone by the end of the year. The hours are 8:00 a.m. to

5:00 p.m. Monday-Friday no weekends. This is a mom and pop business. Signs will meet all requirements. Improvements will start right away.

- c) Remonstrators: None
- d) Building Department's Comments: Tim Kubiak stated he likes the plan, but in order to start and occupy the business the stuff needs to be done. As far as the parking lot and fencing, what would you start with and what would you save for later. Mr. Eifel stated landscaping and details to the building. Mr. Kubiak asked if the privacy fence was going up between the buildings? The petitioner answered yes.
- e) Board's Discussion: Jerry Wilkening asked how long it would take for them to complete all the improvements. Mr. Eifel stated by the end of 2020. Not planning to start working out of there till next summer. David Austgen stated when you are going to do these things and how they can be managed by our administrative staff. Couldn't we do this with the building permit process and withholding of occupancy that would cause these gentlemen to complete their committed acts and allow you to withhold occupancy during the dependency of those improvements occurring? Tim Kubiak stated getting landscape and brick on the building is one thing, getting the building, fence, asphalt and clean up. Jerry Wilkening asked about the asphalt. Mr. Eifel stated they would replace what was currently there. David Austgen stated the pictures are great and they help explain the circumstance, but one thing I have been talking with the Plan Commission about and will talk about later this evening is when you have a more sophisticated piece of property that has a number of moving uses, there be some consideration of reasonable conditions and a manner of making a business plan from the presentation. Putting to life and Indiana Code that is called a Use Commitment or Zoning Commitment. This seems to be a perfect location, the time of the day your work, ingress/egress, who your tenant is, how you get in and out, what's your timing sequences. It would seem this is that type of property. Let me foundation this for you, the Town Council has spent a tremendous amount of money looking for quality businesses to come to West 133rd Avenue. We have widened the road, put up lights, put in storm drainage, this is a great business location and we have willing and enthusiastic owners. But have a business plan in the form of a Use Commitment makes sense to me. It would be my recommendation if you don't want to do that, then you make a very specific, bullet listing of the conditions of approval and the time lines in which they will be undertaking. The last thing we want is for the enthusiasm to wane, these guys to disappear and a half project started that is on our main corridor. This would be a contractual agreement that is a recordable instrument that runs with the land. It would be in his building permit file, he has site plans, bullet listing terms of completion accomplishment, timelines, puts arms around the use itself so it doesn't led into something other than explained here. Mr. Austgen recommended that the Board make the listings and then consider directing that the right form of legal document to be prepared that will accompany the building permit that will be issued. John Kieपुरa asked if they would go to the Plan Commission. David Austgen stated they do not go to the Plan Commission, it will be handled here. You would be the signatory to the commitment by public meeting action approval and they sign it if they agree and off we go to the Recorder's Office and they do their thing, Tim and Michelle do theirs and you have accomplished yours. This Use Variance does go to the Town Council. Nick Recupito asked this is considered a Zoning Commitment. David Austgen stated that is what it is called in the statute, Indiana Code 36741015 Zoning or Use Commitment. Tim Kubiak asked how does this get created? Mr. Austgen stated he does at your direction, will explain later tonight how the template is formed. Have resurrected it from an

old document from 1996. Jeremy Kuiper stated if I understand correctly basically instead of just saying we will allow them to do things or not, you are legally responsible to do these things, is that the difference. David Austgen stated it is a higher degree of land use approval processing. Tim Kubiak stated so putting all the stuff they are presenting into a check list. Mr. Eifel stated they are fine with this. Jerry Wilkening stated this ultimately protects everyone. Michelle Bakker asked if such a document was created would it be based off of our wording working with them to create that document or would it be specifically item by item as list of what the Board decides. David Austgen stated it would be a combination, if the BZA determined this was a quality use, that they wanted to certify a favorable recommendation to the Town Council they can impose conditions. This presentation tonight was an explanation of what they want to do on their property, this would accompany the recommendation to the Town Council, they are the decision makers and they need this recommendation with a foundation. Jeremy Kuiper stated we do not have to describe everything and there would be some working with the Building Department to see if the things are done even outside of our reasonable conditions. David Austgen stated there should be a bullet listing of the items that need to be included within the commitment, that commitment runs with the land. It is essentially a lien and they cannot do anything else on this property. Tim Kubiak said the petitioners came back with great information and did everything the Board asked. Discussion ensued on lighting, drainage and a possible site plan. David Austgen stated if not enough information presented you would need the site plan, if they provide accurate information then no site plan needed. Mr. Kubiak asked how do we move forward with the zoning commitment? David Austgen stated a recommendation needs to be voted on by the BZA with all conditions they deem appropriate, would suggest that the zoning commitment be appended to the recommendation of action steps and identify the items here that you can to the extent you can and defer to the staff for the review with the property owners with those details that need to be included. The information the petitioner provided is a good start. Tim Kubiak stated concerns with guard rail. Part of the motion should be Mr. Austgen to prepare the zoning commitment. Multiple discussions ensued on what stipulations to include and how to draft the zoning commitment. The petitioner will need to meet with Michelle Bakker to establish the list.

A motion was made by John Kieupra and seconded by Jerry Wilkening to send a favorable recommendation to the Town Council for the Use Variance to allow the petitioner to operate two (2) business on a lot in a B2 Zoning District an Auto Service Center and Storage for Govert Landscaping contingent on a zoning commitment established based on the presentation at the Public Meeting and to include the findings of fact.

Nick Recupito	Jerry Wilkening	John Kieupra	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Absent	Yes	4-0

New Business:

1. Deruntz - Developmental Variance

Owner/Petitioner: Scott Deruntz, 7314 W. 143rd Ln., Cedar Lake, IN 46303
Vicinity: 7314 W. 143rd Ln., Cedar Lake, IN 46303
Legal Description: Surprise Park on the Lake BL.9 lot 10 & W.1/2 of vacated public way

Tax Key Number(s): 45-15-35-181-020.000-043

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title VIII-Residential (R2) 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; D. Rear Yard: there shall be a rear yard on not less than twenty-five percent (25%) of the depth of the lot; E. Building Coverage: Not more than twenty-five percent (25%) of the area of the lot may be covered by buildings and/or structures

This Developmental Variance is to allow the Petitioner to build a single story addition with a side yard of three ft. (3'), rear yard of ten ft. (10') and lot coverage over twenty-five percent (25%)

- a) Attorney to Review Legals: David Austgen stated the legals are in order and a public hearing may be conducted.
- b) Petitioner's Comments: Scott Deruntz, 7314 W. 143rd Ln., would like to put an addition out the back of the property for a bigger master bedroom and bath.
- c) Remonstrators: None
- d) Building Department's Comments: Tim Kubiak stated we did the math and this would be thirty-eight percent (38%) lot coverage. If you look at the size of the lot, it is very shallow, there is a power line going through the yard and a ten ft. (10') easement going through for the power line in the back. Everything in that area is set off the road. Small house on a small lot. Fixing up everything in that neighborhood.
- e) Board's Discussion: Jeremy Kuiper stated it looks like it is an extension of the house, but since it is on an angle and they are trying to square it off. The Board agreed this is a small house on a small lot.

A motion was made by Jerry Wilkening and seconded by John Kiepura to approve the Developmental Variance to allow the Petitioner to build a single story addition with a side yard of three ft. (3'), rear yard of ten ft. (10') and lot coverage over twenty-five percent (25%) as presented and to include the findings of fact.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Absent	Yes	4-0

2. Frederick - Developmental Variance

Owner/Petitioner: William T. Frederick, 13701 Lauerman Rd., #47, Cedar Lake, IN 46303
Vicinity: 13701 Lauerman Rd, #47, Cedar Lake, IN 46303
Legal Description: Cedar Lake Ministries 2nd Resub. Lot 50 & Outlot 50
Tax Key Number(s): 45-15-27-253-005.000-014

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title VIII-Residential (R2) 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; D. Rear Yard: there shall be a rear yard on not less than twenty-five percent (25%) of the depth of the lot; Section 5: B. Maximum attached garage size shall be eight hundred sixty-four (864) square feet

This Developmental Variance is to allow the Petitioner to build a 10'x16' garage addition and 10'2"x12'6" side addition two ft. (2') from the north side yard property line and build a rear and walkout basement with a screen porch one ft. six in. (1'6") from the rear parkway. Total garage size of nine hundred forty-five sq. ft. (945)

- a) Attorney to Review Legals: David Austgen stated the legals are in order and a public hearing may be conducted.
- b) Petitioner's Comments: Bill Frederick, 13701 Lauerman Rd, #47. Wants to build a 10x16 garage addition on the north side of the property and a 10'2"x12'6" side addition which will convert an office to a bedroom and it would be two ft. (2 ft.) from the property line on the north side and currently there is an eight ft. (8 ft.) porch on the lake side of the house, want to put a four ft. (4 ft.) addition on the house with a ten ft. (10 ft.) extension of a screened in porch top and bottom floor, it will be one ft. six in. (1 ft. 6 in.) from the rear parkway on the far northeast side of the property and thirteen ft. (13 ft.) six (6) from the parkway on the southeast of the property. The parkway goes on an angle, the total garage size will go from eight hundred sixty sq. ft. (860 sq. ft.) to nine hundred and forty-five sq. ft. (945 sq. ft.)
- c) Remonstrators: None
- d) Building Department's Comments: Tim Kubiak stated he already has the existing conditions he is asking for, the house there has the two point two (2.2) rear yard line for that twenty-four ft. (24'). Wants to make the rest of the house the same. Mr. Kubiak asked the petitioner will the side wall of the screen porch on the north side will that be a wall or screen, concerns with the view of the neighbor. Mr. Frederick stated the ten ft. (10') will be screen.
- e) Board's Discussion: Discussion ensued on the survey, Tim Kubiak stated all the surveys were recently redone. This has been approved by the Cedar Lake Ministries, letter in the file.

A motion was made by Nick Recupito and seconded by Jerry Wilkening to approve the Developmental Variance to allow the Petitioner to build a 10'x16' garage addition and 10'2"x12'6" side addition two ft. (2') from the north side yard property line and build a rear and walkout basement with a screen porch one ft. six in. (1'6") from the rear parkway. Total garage size of nine hundred forty-five sq. ft. (945) and to include the findings of fact.

Nick Recupito	Jerry Wilkening	John Kiepora	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Absent	Yes	4-0

3. Mayda - Developmental Variance

Owner/Petitioner: Cynthia Mayda, 9903 W. 150th Ct., Cedar Lake, IN 46303
 Vicinity: 99903 W. 150th Ct., Cedar Lake, IN 46303
 Legal Description: Lynns way Unit 3 Lot 139
 Tax Key Number(s): 45-19-04-226-024.000-057

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; 5) A "vision triangle" shall be maintained at the intersections of all public right-of-ways; **and** Title XXIII-Accessory Regulations: Section 1: A. 4) No accessory buildings shall be allowed in the front yard of any residential lot

This Developmental Variance is to allow the Petitioner to build six ft. (6') privacy fence and a 12'x16' shed six ft. (6') from the property line in the front yard of a corner lot

- a) Attorney to Review Legals: David Austgen stated the legals are in order and a public hearing may be conducted.
- b) Petitioner's Comments: Cynthia Mayda, 9903 W. 150th Ct., Cedar Lake. Want a shed and fence. Wants to put the fence an inch behind the house toward Drummond and be six ft. (6') off the sidewalk.
- c) Remonstrators: None
- d) Building Department's Comments: Tim Kubiak they are on a corner lot with three (3) front yards. Not in favor of what they presented, if you go directly east of them, we did grant a variance for the neighbors with twenty ft. (20') for their privacy fence, which maintained the corridor down the roadway. Mr. Kubiak referenced some pictures of neighboring property. Recommends that same twenty ft. (20') setback from the sidewalk, but if wanted to have a ten ft. (10') strip all the way down the side of the house to the front of the house that would be fine. The shed needs to be ten ft. (10') away from the house. Mr. Kubiak explained to the petitioners where the placement of the fence and shed could be while looking at their survey. The shed cannot be in the thirty ft. (30') easement. Essentially the same thing that was granted across the street to the east, twenty ft. (20') setback off of Drummond for a shed or fence, and also the normal in line setback off of 151st, to match up with other fences. Will put the shed in the corner thirty ft. (30') north of Drummond and twenty ft. (20') west. Tim Kubiak showed the petitioner cannot put the shed in the easement.
- e) Board's Discussion: Jeremy Kuiper stated the shed is put not in the utility easement and ten ft. (10') from your structure and twenty ft. (20') off the sidewalk. To be consistent with what we have allowed with the neighbor, twenty ft. (20') off of the property line. Multiple discussions were had with the petitioners about the thirty ft. (30') easement and nothing is allowed in that easement. Jeremy Kuiper stated in order to make an informed decision, we need to see the fence drawn twenty ft. (20') from Drummond and the shed outside the utility easement. John Kiepura asked if they could put the shed on the other side of the house, but there is an easement there. Michelle Bakker stated she would go out and do measurements and if this is approved come in to turn in the permit application. Jeremy Kuiper stated for this to work, it would be up to the petitioner to make sure the shed is no in the utility easement. Tim Kubiak stated the fence needs to be twenty ft. (20') from the property line.

A motion was made by John Kiepura and seconded by Jerry Wilkening to approve the Developmental Variance to allow the Petitioner to have a six ft. (6') privacy fence twenty ft. (20') from the property line on Drummond St., and a 12x16 shed that will not be in any easement and not less than ten ft. (10') from the structure on the 151st Street side and to include the findings of fact.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Absent	Yes	4-0

4. Wilkening - Use Variance

Owner: Joel Wagner, 1401 Wilderness Dr., Schererville, IN 46375
Petitioner: Jesse Wilkening, 12315 Kennedy St., Cedar Lake, IN 46303

Vicinity: 12937 Wicker Ave., Ste. C, Cedar Lake, IN 46303
Legal Description: Windy Hill Addition Lot 1
Tax Key Number(s): 45-15-21-301-017.000-014

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

This Use Variance is to allow the Petitioner to have two (2) businesses on a lot in a B-2 Zoning District

- a) Attorney to Review Legals: David Austgen stated the legals are in order and the public hearing may be conducted.
- b) Petitioner's Comments: Jesse Wilkening and partner Mark Banter at 12937 Wicker Ave., Ste. C. Are here to seek a variance for juice bar City Blends, have all health inspections and are ready to go. The juice bar will be open from 6:00 a.m. to 5:30 p.m. on weekdays and on weekends 9:00 a.m. to 2:00 p.m. Most of the clients will be gym patrons, a few walk ins. Mr. Banter gave a brief description of the type of smoothies they will be serving. Want to attract kids in sports to give them a healthy option. Will be out the door in five (5) minutes.
- c) Remonstrators: None
- d) Building Department's Comments: Tim Kubiak stated the Fuel Gym in the same complex has a juice bar inside the gym, the difference between the two (2) is the Fuel one is for their patrons only. These guys have a door and a sign for City Blends Smoothies, that is what pushes it to a dual use. If they weren't advertising and it was just something the patrons use they wouldn't have to be here. Michelle Bakker stated if a favorable recommendation is sent, would like it to be for this business only as the second business.
- e) Board's Discussion: Nick Recupito asked for some details on the business. Mr. Wilkening stated they do personal training and baseball training. This is a client based business, by appointment. Nick Recupito asked if there can be anything done about pedestrian traffic and crosswalks in that area. Tim Kubiak stated that parking lot is busy on a Friday or Saturday. If Aurelios wasn't in there it would be the perfect amount of parking for this area. Jerry Wilkening stated this is a private parking lot. Discussion ensued on parking for each business.

A motion was made by John Kiepura and seconded by Jerry Wilkening to send a Favorable Recommendation to the Town Council for the Use Variance to allow the Petition to have two (2) businesses Thrive Training Facility and City Blend Smoothie Café on a lot in a B-2 Zoning District and to include the findings of fact.

Nick Recupito	Jerry Wilkening	John Kiepura	Jeff Bunge	Jeremy Kuiper	Vote
Yes	Yes	Yes	Absent	Yes	4-0

Public Comment:

David Austgen stated given some circumstances of dialogue and planning going on and given some historical circumstances on commercial properties in Town, we have looked at using a contractual commitment method of identification of conditions and approval requirements and enforcement strength in the Indiana Code. Specifically I recently drafted, Julie Sadler's property at 13536 Morse Street. Staff has met with her many times and she came before you about two (2) months ago and then withdrew her petition before the Town Council and did not come back. She went to the Building Department filing an application for a Building Permit. There is a lot of

confusion with this property, a lot of things were looked at, there was a meeting and a nice memo of the meeting. With that compilation of information there was discussion between Michelle and I, it was my recommendation we consider using a Use Commitment to get things clarified as to what the uses and parameters will be. There is a pending item that will be coming to the Town Council. Ms. Sadler has agreed to enter into an agreement that outlined the uses, the hours, number of employees, and parking. I would call the two (2) properties that Ms. Sadler has been here for pretty sensitive properties on Morse Street in our commercial corridor, but also a road that is in our master plan for some big things coming up in the next few years. This gives you a chance as a Town to enforce and mandate compliance or terminate the use. It will run with the land, have the enforcement authorities under Title 36 of the Indiana Code to make it work. Would recommend after the first of the year that the BZA and Plan Commission have a joint public meeting to talk about the ordinances, the Zoning Ordinance specifically because that is what your role is. You handle the variances and special exceptions, so there is some commonality and understanding where we are at, what position in the community's growth that is occurring and how we are going to be going forward. There is a draft zoning ordinance and Michelle has worked hard at getting a format together for some structure use. Jeremy Kuiper asked how is this different then us putting reasonable and enforceable limitations on any motion we have. Mr. Austgen stated this is a strict statutory provision, it will run with the land if properly executed. It contains the reasonable conditions you have the right to impose if deemed appropriate. It doesn't let someone shirk from the commitments they made when they entered into it. We have talked about this briefly with the Ravens property in 1996 the Cofhen developed it, they entered into an agreement that listed every item they could have. That was important at the time because of the beginning of the growth on the highway and it put some parameters around it. It helped the Town Council approve a zone map amendatory ordinance made by them and that business began. Jeremy Kuiper asked why wouldn't we do this for everything? What is an appropriate use for this condition? Mr. Austgen stated that most business uses in areas of growth need or should have parameters. It does not need to be done for residential properties. Tim Kubiak stated something like this in an old business or old building, realistically someone could bring in a plan and it could be a three (3) year plan. David Austgen stated if there is a change in the business, they would need to go through the public hearing process. Jerry Wilkening stated these details are the same details that perhaps would be in a special use variance. So this use agreement would have more details. Nick Recupito stated with a use variance if things change, we make them come back. Tim Kubiak stated it is more along the lines of getting the building to the standards the Town has set. Michelle Bakker stated we can work together with the petitioner and the attorney to make sure this list matches the Board's stipulations. Discussion ensued on the commitment for the Sadler property and what needs a survey and site plan. Discussion ensued on Frank's BBQ.

Update Items:

Adjournment: Time: 10:06 p.m.

Press Session: Board of Zoning Appeals Meeting – January 9, 2020 at 7:00pm

Nick Recupito

Jeff Bunge, Vice Chairman

Jerry Wilkening

Jeremy Kuiper, Chairman

John Kiepora

Attest: Tammy Bilgri, Recording Secretary

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