



**CEDAR LAKE BOARD OF ZONING APPEALS MINUTES**  
**CEDAR LAKE TOWN HALL, 7408 CONSTITUTION AVENUE, CEDAR LAKE, INDIANA**  
**July 8, 2021, at 7:00 pm**

**CALL TO ORDER:**

Mr. Nick Recupito called the Board of Zoning Appeals to order at 7:00 pm., on Thursday, July 8, 2021, with its Members attending on-site. The Pledge of Allegiance was recited by all.

**ROLL CALL:**

**Members present:** Ray Jackson; Jerry Wilkening; John Kiepura; Jeff Bunge, Vice-Chairman; and Nick Recupito, Chairman. A quorum was attained. **Also present:** David Austgen, Town Attorney; Jill Murr, Planning Director; and Margaret Abernathy; Recording Secretary Pro Tem

**APPROVAL OF MINUTES:**

A motion was made by Mr. Bunge and seconded by Mr. Kiepura to defer the May and June minutes. Motion carried unanimously by roll call vote.

Mr. Jackson	Aye
Mr. Wilkening	Aye
Mr. Kiepura	Aye
Mr. Bunge	Aye
Mr. Recupito	Aye

Attorney Austgen asked when they expect to have the minutes. Ms. Abernathy stated that she hoped to have the minutes to them the following week.

**OLD BUSINESS:**

Mr. Recupito stated that having the minutes for the items under Old Business is crucial as these items have been deferred and the contents of the minutes contain details of previous meetings especially with Mr. Jackson being new and asked Attorney Austgen if the Board can defer the two Old Business agenda items. Attorney Austgen advised that the Board may defer those agenda items.

Mr. Recupito explained for the edification of the petitioners and the public present that the Auger Petition and the Early Petition Public Hearings are being deferred to the following month because the Board wants to do the best job they can for all petitioners and the public.

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A motion was made by Mr. Wilkening and seconded by Mr. Jackson to defer both petitions under Old Business, Thomas Augur, Jr, for a Developmental Variance at 13172 Parrish Avenue and Ryan and Amanda Early for a Developmental Variance at 14323 and 14326 Lake Shore Drive, to the August 12, 2021, meeting contingent upon the Members receiving the minutes. Motion carried 3 ayes to 2 nays by roll-call vote:

Mr. Jackson	Aye
Mr. Wilkening	Aye
Mr. Kiepura	Nay
Mr. Bunge	Nay
Mr. Recupito	Aye

Ms. Early commented the Mr. Jackson was present at the last meeting during their Public Hearing. Mr. Recupito stated that he understood that; however, they need to have the minutes at hand to know exactly what was discussed at the previous minutes.

- 1. Auger – Developmental Variance – Petitioner: Thomas Auger, Jr.**  
**Vicinity: 13172 Parrish Avenue – Deferred**
- 2. Early – Developmental Variance – Petitioners: Ryan and Amanda Early**  
**Vicinity: 14323 and 14326 Lake Shore Drive – Deferred**

**NEW BUSINESS:**

- 1. Dudlack – Developmental Variance – Petitioner: Mitchell J. Dudlack**  
**Vicinity: 12801 Oak Street**

Mr. Recupito advised that the next item on the agenda is a Developmental Variance request by Mitchell J. Dudlack for the property located at 12801 Oak Street to allow the Petitioner to replace the existing fence with a 4-foot picket fence in the side yards and the front yard 5-feet from Oak Street.

Attorney Austgen advised that all items are in order for this Public Hearing to proceed.

Mr. Dudlack stated that he is requesting the variance to replace a fence that is currently located on the property with a 4-foot picket fence. He stated that he would like to obtain his permit to order the fencing because materials are taking several weeks to get.

Ms. Murr advised that Mr. Dudlack is replacing an existing fence in the front side yards of the property with a 4-foot transparent fence, which is allowed in side yards. The existing fence, which did not require any variances when it was installed in 2002, is to be replaced in its entirety.

Mr. Recupito opened the floor for Public Hearing comment at 7:12 p.m., and having no one come forward to speak, he closed the Public Hearing and brought the matter back to the Board.

The Board concurred that it would be an improvement over the existing fence.

A motion was made by Mr. Wilkening and seconded by Mr. Kiepura to approve Mitchell J. Dudlack to replace the existing fence at 12801 Oak Street with a 4-foot picket fence in the side yards of the front yard 5-feet from Oak Street. Motion carried unanimously by roll call vote.

Mr. Jackson     Aye  
Mr. Wilkening   Aye  
Mr. Kiepura     Aye  
Mr. Bunge       Aye  
Mr. Recupito    Aye

**2. Tiffany – Developmental Variance – Petitioner: Donald A. Tiffany**  
**Vicinity: 13700 Austin Street**

Mr. Recupito advised that the next item on the agenda is Petitioner Donald A. Tiffany requesting a Developmental Variance for the property located at 13700 Austin Street to allow the Petitioner to build a shed in a front-yard corner lot.

Attorney Austgen advised that all items are in order for this Public Hearing to be conducted.

Mr. Tiffany stated that he wishes to build a storage shed to hold his lawn and snow removal equipment as he has a small garage and his back yard is all easement. The door of the shed would face south, the long side of the shed runs east and west, and the shed will have a metal roof instead of shingles.

Ms. Murr advised that the property is a corner lot that backs up to the railroad. Mr. Tiffany wants to put a 12-foot by 10-foot shed up in the side yard with the appropriate setbacks; however, since it is a corner lot, that side yard is considered a front yard. She further advised that the plat was reviewed extensively by Ms. Bakker and herself.

Mr. Recupito opened the floor for Public Hearing at 7:20 p.m. Having no one wishing to speak, he closed the Public Hearing and brought the matter back to the Board.

A motion was made by Mr. Wilkening and seconded by Mr. Bunge to approve a Developmental Variance for Petitioner Donald A. Tiffany to allow a shed in the front yard of a corner lot with the door facing south and the shed running east and west longways at 13700 Austin Street, including the Findings of Fact. Motion carried unanimously by roll call vote.

Mr. Jackson     Aye  
Mr. Wilkening   Aye  
Mr. Kiepura     Aye  
Mr. Bunge       Aye  
Mr. Recupito    Aye

**3. Shaprio – Variance of Use – Petitioners: Jason and Lisa Shapiro**  
**Vicinity: 13115 Wicker Avenue – Owner: The Lawrence Property Group, Sean A. Perfetti**

Mr. Recupito advised that the next item on the agenda is for the Petitioners Jason and Lisa Shapiro. The Petitioners are requesting a Variance of Use to allow the operation of a preschool in a B-2 Zoning District

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in Units I and J of the Great Oaks plaza located at 13115 Wicker Avenue, owned by The Lawrence Property Group, Sean Perfetti.

Attorney Austgen advised that all items are in order for the Public Hearing to be conducted.

Lisa and Jason Shapiro addressed the Board and stated that they wish to use Units I and J of the Great Oaks strip mall to operate a preschool.

Ms. Murr advised that this was the location where the Early Childhood Learning Center operated. This preschool is smaller. They will have drop off and pick up. They will be required to follow all state requirements that must be met for a preschool. All the bollards are still in place. It is not a use listed under the B-2 Zoning. Ms. Murr further stated that the Early Learning Childhood Academy went through the same process when they originally opened in that location. The preschool will be for children between the ages of 3 to 5.

Responses to questions asked: They will use the same play area as the Early Learning Childhood Academy had, and the concrete blocking around the playground would remain in place. Their business hours will be from 7 a.m. until 5:30 p.m., Monday through Friday. They are starting with one employee and will adjust that number based on the number of children that are attending the preschool. Those numbers are governed by State statutes. They have three classrooms with a capacity for 12 children in each classroom. The maximum number of children they will enroll is 36, and the number of employees needed for that number of enrollees would be five or six employees. There are hookups for a sink and an area set up for a kitchen. They do not intend to do meal prep or provide meals; the children will bring their own meals. The State governs the number of employees based on the number of students. This is just a preschool, not a daycare, and there are different rules that govern those businesses. The State recommendation for a preschool is 12 kids per teacher for the age group they are taking. They intend to call the preschool "Colorful Beginnings". They are happy with 36 children, but if they have the chance to expand, they would like to do so.

Ms. Murr advised that Mr. Tim Kubiak has reviewed the project and stated that some of this would be picked up by the State for the guidelines.

Mr. Recupito opened the floor for Public Hearing comment at 7:34 p.m., and having no one come forward to speak, he closed the Public Hearing and brought the matter back to the Board.

Mr. Recupito asked if the Town limited the Early Learning Childhood Academy to 60 pupils. Ms. Murr responded in the negative and stated that the Town did not have a cap for them. The concern was for the playground and the safety concern, and the safety being in place. Having the fence placement following the Public Safety recommendation for a 2,360 square-foot playground area. Ms. Murr advised that the Early Learning Childhood Academy dedicated playground area was 2,360 square feet.

Having no further discussion from the Board, Mr. Recupito entertained a motion for a recommendation to the Town Council.

A motion was made by Mr. Kiepura and seconded by Mr. Wilkening to send a favorable recommendation to the Town Council for the Variance of Use for the property located at 13115 Wicker Avenue, Units I and J to allow the Petitioners Jason and Lisa Shapiro to operate a preschool from 7 a.m. to 5:30 p.m., weekdays, no Saturdays or Sundays, with a maximum of 36 children, and a 2300 square-

foot, fenced-in, protected playground, including the Findings of Fact. Motion carried unanimously by roll call vote.

Mr. Jackson Aye

Mr. Wilkening Aye

Mr. Kiepura Aye

Mr. Bunge Aye

Mr. Recupito Aye

**4. Suty – Developmental Variance – Petitioner: Marilyn Suty  
Vicinity: 14114 Garden Way**

Mr. Recupito advised that the next item on the agenda is a Developmental Variance request by the Petitioner Marilyn Suty to allow a variance of the rear-yard setback from 30 feet to 27 feet to build a 12-foot by 30-foot deck off the back of the house located at 14114 Garden Way.

Attorney Austgen advised that all items are in order for the Public Hearing to be conducted.

Ms. Suty approached the podium and confirmed the Petition is as described by Mr. Recupito when asked to do so.

Ms. Murr advised that there is a letter in the meeting packet with the HOA approval for the construction of the deck as proposed. There is a covered porch on the back of the house. The property backs up to a pond. Ms. Murr reviewed the applicable PUD building guidelines which predicates that the lot coverage is to be no greater than 38 percent and a rear-yard setback of 30 feet. Ms. Murr clarified that the request does not exceed the allowable lot coverage.

Mr. Wilkening and Mr. Kiepura explained the PUD process for those who may not be familiar with the process.

Ms. Suty clarified the following in response to Board questions: There is an existing covered porch on the back of the house that she would like to extend with the deck. She would like the extra 3 feet to have room for her outdoor dining furniture with ample room to walk around it, noting that there would be railing around it for safety purposes. Her property backs up to a detention pond.

Mr. Recupito opened the floor for the Public Hearing at 7:50 p.m. and read the HOA letter into the record. Having no one wishing to speak, he closed the Public Hearing and brought the matter back to the Board.

Mr. Recupito stated that the subdivision is brand new and that he finds it troubling that with all the hours that were put into developing that PUD that it is not good enough. He then read the Findings of Fact into the record:

“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 the practical difficulties in the use of the property.”

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Mr. Recupito added that it is his personal opinion that he doesn't believe that there are any practical difficulties in this variance, if granted. Discussion ensued regarding PUD subdivisions in town and their setback lines.

Attorney Austgen explained the amount of work that went into planning this PUD from engineering to density; the covenants, conditions, and restrictions; and the Site Plan and specifics of the same. He advised that all of those are part of the consideration of the contract and that consideration is very important. He reviewed the steps that were taken before the PUD contract was finalized at the Town Council level after a recommendation was reached by the Plan Commission and submitted to them. He stated that for the developer's HOA agent entity to check off and say that this Petition is okay is a breach of contract in his opinion. He further cautioned the Board about setting a precedent. Attorney Austgen listed potential areas that will be coming into town and be developed and noted that by using proper policy making, we maintain quality, preserve value, and have uniformity that folks can count on when they buy homes and come here to live and enjoy our community. He added that there is a lot more to it than just this in terms of Town policy and development strategy and uniformity for process.

Mr. Kieपुरa asked if what Attorney Austgen is saying is that HOA approval, which is the developer at this time, is in breach of contract with the PUD that they signed. Attorney Austgen responded that it is how he construes it. It is given by the outfit that contracted with the Town not to do that. Attorney Austgen asked that his comments not be construed about the applicant or request; it has to do with the development arrangement and our responsibilities on the Town's side of it.

Mr. Kieपुरa stated that with what he just heard, we should never grant a variance to anybody because we are breach of contract with our Zoning Ordinance when we grant a variance. Discussion ensued.

Attorney Austgen clarified his statement, "What I'm saying is A PUD is a zoning district classification by which parties agree to what's going to happen. We didn't make the agreement ourselves. The developer made the agreement, in return for which, the Council adopted an ordinance which gave them the green flag."

Mr. Kieपुरa stated that it is their right to approve this variance if they choose. Attorney Austgen concurred.

A motion was made by Mr. Kieपुरa to approve the Developmental Variance to allow Ms. Suty to build a 12-foot by 30-foot deck, reducing the rear-yard setback from 30 feet to 27 feet, including the Findings of Fact. Motion dies for the lack of a second.

A motion was made by Mr. Bunge and seconded by Mr. Wilkening to deny the Developmental Variance for the property located at 14114 Garden Way by Petitioner Marilyn Suty; the strict application of the Zoning Ordinance does not pose any practical difficulties for the use of the property. Motion carried 4 ayes to 1 nay.

Mr. Jackson	Aye
Mr. Wilkening	Aye
Mr. Kieपुरa	Nay
Mr. Bunge	Aye
Mr. Recupito	Aye

**5. Rokaitis – Developmental Variance – Petitioners: Irene and John Rokaitis**  
**Vicinity: 13421 Cedar Street**

Mr. Recupito advised that the next item on the agenda is the Petition for a Developmental Variance by Irene and John Rokaitis to allow the installation of an aluminum fence to be put in place of a previously existing fence with a gate in the front yard, on the property line with a zero-foot setback on the property located at 13421 Cedar Street.

Attorney Austgen advised that all items are in order for the Public Hearing to be conducted.

Ms. Rokaitis stated that there used to be a 6-foot chain-link fence around the entire property along with a house. The house was demolished, and the fence was damaged during the demolition of that house. A section had to be removed in order to access the house to demolish it. She stated that she lives right across the street from that property. Her grandkids play in that yard; she has no grass in the yard where the house is located as it touches the lake. She adopted a dog with epilepsy, and the dog has fallen into the lake a couple of times already.

Ms. Rokaitis stated that it is her desire is to fence that property back in so her grandkids and dog have a safe place to play and run around. Ms. Rokaitis stated that her neighbor helped her earlier that day, and they found the marker, so it is actually 1-foot setback. Ms. Rokaitis distributed copies of a photo of the marker to the Board Members. She added that she is in an old part of town, and there are fences and garages touching the street. She is replacing the missing portion of the fence.

Ms. Murr advised that it will be a 38-foot fence with a 17-foot gate. The property is next to one of our lift station. Ms. Rokaitis owns the property where the proposed fence is going in as well as the property with her house directly across the street.

In response to questions asked, Ms. Rokaitis confirmed that she would have the gates open into the property and not toward the street. There is a garage on the property. That portion of the fence has been gone since they demolished the house in 2018. She was taking care of an ill neighbor who passed away in 2019, and then the pandemic hit prolonging putting up the fence even further.

Mr. Recupito opened the floor for the Public Hearing at 8:24 p.m. Having no one coming up to speak, he closed the Public Hearing and brought the matter back to the Board.

Mr. Wilkening complimented Ms. Rokaitis on her thoroughness.

A motion was made by Mr. Wilkening and seconded by Mr. Kiepora to allow the Developmental Variance for the property located at 13421 Cedar Street by Petitioners Irene and John Rokaitis to replace a previously installed fence with a 4-foot aluminum fence with a gate that only swings inward in the front yard near the property line to be installed at the same parallel line, including the Findings of Fact. Motion carried unanimously by roll call vote.

Mr. Jackson	Aye
Mr. Wilkening	Aye
Mr. Kiepora	Aye
Mr. Bunge	Aye
Mr. Recupito	Aye

**6. Phelps – Developmental Variance – Petitioners: Michael J. Phelps and Taylor K. Ahlgrain  
Vicinity: 11255 West 135<sup>th</sup> Place**

Mr. Recupito advised that the next item on the agenda is the Petition for a Developmental Variance by Michael J. Phelps and Taylor K. Ahlgrain for the property located at 112ff West 135<sup>th</sup> Place to allow a 6-foot privacy fence in a front yard of a corner lot with a setback of 41 feet off of U.S. 41.

Attorney Austgen advised that all items are in order for the Public Hearing to be conducted.

Mr. Phelps stated that he would like to install a 6-foot privacy fence at a distance of 41 feet in from U.S. 41. The fence will sit just west of the tree line and enclose the rear yard for a safe place for his children to play. There used to be a small dog run, but he was able to push that over. The fence he is proposing will come off the side of the house, run toward the back property line but will be in front of the utility easement, run to that 41' setback line, and back up that side of the home. He intends to install a PVC privacy fence.

Ms. Murr advised that there is a 60-foot right-of-way line for U.S. 41, and he is requesting a 41-foot setback to install a privacy fence. The INDOT project will end/start just north of 135<sup>th</sup> Place. She further advised that there is 132 feet from the center line of U.S. 41 to the setback line where Mr. Phelps wants to build the fence.

Attorney Austgen advised that a number of developments may annex into town and develop in that area.

Mr. Phelps answered the Boards questions: If he were to stick to that 60-foot right-of-way as the install line, it would only give him the area where the old dog run was on that side of the house. He would like to eventually add a 2-car garage as there is only a 1-car garage at this time, and that would fit inside the fence.

Ms. Murr advised that if Mr. Phelps would have applied for the garage variance at this time, it would have expired before the garage would be built; however, if he would have requested that variance and the Board would have approved the same, he would not be before them for the fence because the fence would then be in his side yard and fall behind the garage. It is a matter of timing.

Mr. Recupito opened the floor for Public Hearing at 8:41 p.m.

Mr. Charlie Watt, 11285 West 135<sup>th</sup> Place, is a neighbor and spoke in support of the fence for his children to have a safe place to play.

Mr. Rich Thiel, 11363 West 135<sup>th</sup> Place, spoke in support of the fence. He added that U.S. 41 already has a center turn lane in that area, so it is likely as wide as it will get.

Having no one else coming forward to speak, Mr. Recupito closed the Public Hearing and brought the matter back to the Board.

A motion was made by Mr. Wilkening and seconded by Mr. Jackson to approve the Developmental Variance for the property located at 11255 West 135<sup>th</sup> Place to allow the Petitioners Michael J. Phelps and Taylor K. Ahlgrain to install a 6-foot privacy fence with a 41-foot setback line from the U.S. 41 edge



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of pavement contingent upon the existing trees be left standing and that the fence be constructed using PVC materials, including the Findings of Fact. Motion carried unanimously by roll call vote.

Mr. Jackson      Aye

Mr. Wilkening   Aye

Mr. Kiepura      Aye

Mr. Bunge        Aye

Mr. Recupito     Aye

**UPDATE ITEMS:**

**1. Resolution No. 2021-01 – Board of Zoning Appeals Rules & Regulations**

Ms. Murr advised that this item will continue to be updated they go through the Zoning Ordinance Amendment and will be forthcoming.

The Board discussed a property on 145th across from the entrance to the Southshore Golf Course to ascertain if a variance was given for that property. Ms. Murr advised that both Tim Kubiak, Director of Operations, and Don Oliphant, Town Engineer, had reviewed that property and everything is within the appropriate setback lines. She stated that she would pull the permit and get the information to them.

**PUBLIC COMMENT:** None was had.

**ADJOURNMENT:** A motion to adjourn was made by Mr. Bunge. Mr. Recupito adjourned the meeting at 8:51 p.m.

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**Town of Cedar Lake  
Lake County, Indiana  
Board of Zoning Appeals**

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**Nick Recupito, Chairman**

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**Jeff Bunge, Vice-Chairman**

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**Ray Jackson, Member**

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**John Kiepora, Member**

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**Jerry Wilkening, Member**

**Attest:**

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**Margaret R. Abernathy, Recording Secretary Pro Tem**

*The Minutes of the Cedar Lake Plan Commission Work Session are transcribed pursuant to IC 5-14-1 5-4(b), which states:*

*(b) As the meeting progresses, the following memoranda shall be kept:*

- (1) The date, time, and place of the meeting.*
- (2) The members of the governing body are recorded as either present or absent.*
- (3) The general substance of all matters proposed, discussed, or decided.*
- (4) A record of all votes taken, by individual members if there is a roll call.*
- (5) Any additional information required under IC 5-1.5-2-2.5.*

**Cedar Lake Plan Commission: Minutes of the Public Meeting, July 8, 2021**

*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.*