



**CEDAR LAKE BOARD OF ZONING APPEALS MINUTES  
CEDAR LAKE TOWN HALL, 7408 CONSTITUTION AVENUE, CEDAR LAKE, INDIANA  
OCTOBER 14, 2021 at 7:00 pm**

**CALL TO ORDER:**

Mr. Recupito called the Board of Zoning Appeals meeting to order at 7:00 PM, on Thursday, October 14, 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 **Also Present:** David Austgen, Town Attorney; Jill Murr, Planning Director; and Ashley Abernathy, Recording Secretary. **Absent:** none.

**APPROVAL OF MINUTES:**

Mr. Recupito advised that the minutes for the meetings of August 12, 2021, and September 9, 2021, are before them and entertained any corrections to be made or a motion for the same.

A motion was made by Mr. Kiepura and seconded by Mr. Wilkening to approve the minutes of the August 12, 2021, and September 9, 2021. The motion was passed by roll call vote.

Mr. Jackson – Aye

Mr. Wilkening – Aye

Mr. Kiepura – Aye

Mr. Bunge – Aye

Mr. Recupito – Aye

**Old Business:**

**1. Starcevic – Developmental Variance**

**Owner/Petitioner: Tom Starcevic**

**Vicinity: 7615 W. 142<sup>nd</sup> Avenue, Cedar Lake, IN 46303**

Mr. Recupito advised that the first order of Old Business was for the Developmental Variance by Petitioner Mr. Tom Starcevic in the vicinity of 7615 West 142nd Avenue. The Petitioner is requesting a Developmental Variance to allow the Petitioner to have a front yard setback of 8 feet off of 142nd Avenue and a rear yard setback of 8 feet. The Petitioner is also requesting a Developmental Variance to allow for the construction of a garage with a lower level of 1,862 square feet, a second floor of 1,569 square feet, for a total size of 3,431 square feet, with a wall height of 12 feet and 10 inches, and a height of 28 feet

and 8 inches in a front yard. Mr. Recupito asked Mr. Austgen if all the legals were in order for this item. Mr. Austgen responded in the affirmative.

Mr. Starcevic stated he is requesting a front yard setback of 8 feet off of 142nd and a rear yard setback of 8 feet and to construct of a garage with a lower level of 1,862 square feet, a second floor of 1,569 square feet, with a wall height of 12 feet and 10 inches, and a height of 28 feet and 8 inches.

Mr. Recupito thanked Mr. Starcevic and asked Ms. Murr if the Building Department had any comments. Ms. Murr stated a layout of the plat showing the 8-foot setbacks that the Petitioner is requesting and the proposed garage that had been requested at the September meeting was included in the Board's meeting packet.

Mr. Recupito asked Mr. Starcevic if anything has changed in his request since the last meeting. Mr. Starcevic responded he is willing to make changes to his request. He has received feedback that people are not happy with the height of the structure. As such, they are willing to reduce the height of the building from the 28-foot 8-inch height to a 22-foot 8-inch height, in order to make this more appealing to his neighbors and the Town.

Mr. Recupito asked Mr. Starcevic about his process with the Plan Commission. Mr. Starcevic responded he thinks that most of the concerns have been addressed with the Plan Commission. There may be an item remaining and their surveyor is working on their remaining concerns. Ms. Murr stated his Surveyor and the Town Engineer are going back and forth with their comments. Mr. Wilkening asked if one of the items is the Greenleaf item. Ms. Murr responded in the affirmative and another item is the sewer easement along the lake. If the first request is approved the setbacks would be laid out on his plat.

Mr. Recupito asked Mr. Wilkening to explain if the issue with Greenleaf would affect the variances requested. Mr. Wilkening responded the blacktop of Greenleaf is not a square, and the Petitioner and the Town Engineer had discussed the spacing easement. When it was first discussed it was a 12-foot easement, he believes it is down to a 10-foot easement. Mr. Starcevic commented on the same and that they have not responded to the Town Engineer yet. Mr. Wilkening clarified that Mr. Oliphant was asking for 10 feet. Mr. Starcevic responded in the affirmative.

Mr. Recupito asked if the Board had any more questions for the Petitioner. Mr. Bunge asked what the compromise was for the height. Mr. Starcevic they are looking to reduce the height to 22-foot 8-inches. Mr. Bunge asked if he was still wanting 12-foot sidewalls. Mr. Starcevic responded in the affirmative. The Petitioner is wanting to park a pontoon and boat in the garage, along with other items. Mr. Bunge asked what size doors he was planning on having. Mr. Starcevic responded with 9-foot doors off of Greenleaf and an 8-foot door into his yard.

Mr. Recupito asked if the square footage was staying the same. Mr. Starcevic responded in the negative and it would be reduced, but he did not know of the exact number. Mr. Wilkening asked Ms. Murr if she knew the number. Ms. Murr asked if the overall size of the building staying the same. The response was the foot print is staying the same. Mr. Wilkening asked if this was the first Ms. Murr had heard of the height being changed. Ms. Murr responded in the affirmative. A discussion occurred on the change in size, and it being cubic feet that would change versus square feet.

Mr. Recupito opened the meeting up to the public portion and asked if there was anyone present who was for or against this item. Ms. Linda Mason stated that her house is directly north of the property that

the Petitioner is requesting to build on. She has spoken with the Petitioner and she is willing to work with him. Her biggest concern is the flooding issue. The Petitioner has already raised his property in anticipation of his garage, which has been causing the current rain to flood their property. When the Petitioner builds his garage, he will need to raise the land more and that is her main issue. Mr. Recupito advised Ms. Mason that he would address this with the Plan Commission members of the BZA, as the flooding may be a Plan Commission matter. Mr. Recupito thanked Ms. Mason for her time.

Mr. Sigmund Kil stated he lives across the street from the property and next to it. He does not know the problem with the water as the Petitioner lives on a hill and when it rains the water goes to the lake. Mr. Kil discussed that 142<sup>nd</sup> does not have any sewer or curbs, they just paved the road. Mr. Kil stated he does not see a problem with the garage. The property next door has a house that is worth over \$1.5 million and the house Mr. Starcevic wants to build is over \$1 million. The petitioner does not want his stuff just laying around.

Ms. Sandra Herron stated she could say why the road was put down in the manner it was. They wanted the road fixed and the Town had left over asphalt from a final project, so they were able to fix the road. With the Petitioner, when it rains, there is sludge that comes off of his property and downs to her property and floods her yard and garage.

Ms. Karen Kil stated she is for his building of the garage. The garage will beautify the neighborhood and that he has a lot of toys. She would rather look at the garage then all of his property in his yard. She is not aware of any flooding in the area. They have a rental property across the street and they do not see any water.

Mr. Don Watkinson stated he thinks that the Petitioner should be able to put the garage in, especially if the Petitioner puts in the berm in like he says he is going to.

Ms. Murr stated there had been an e-mail correspondence received that was for the Petitioner to be able to be build his garage. Mr. Recupito read the e-mail from Ms. Elisabeth Rosenak into the record which will be included at the end of the minutes. Mr. Recupito then closed the public portion for this item.

Mr. Recupito asked Ms. Murr if she had anything else from the Building Department. If she could elaborate on any of these potential water issues or if this is something being considered by the Plan Commission. Ms. Murr responded every lot in older subdivisions that applies for a building permit is looked at. The Town Engineer is looking at the plat process. Any impact would be looked at once a plan and a building permit are in place for a structure. Mr. Recupito asked if the variance is granted and the building was given approval by the BZA, it would go through the engineering process to see if the building would work and not negatively impact the neighbors. Ms. Murr responded in the affirmative.

Mr. Recupito asked what would happen if the engineer said this building cannot work. Ms. Murr responded that the permit could be denied because of a negative impact. Mr. Recupito asked Mr. Austgen how this would affect the variance that was granted. Mr. Austgen responded would they be able to certify under a developmental variance and ensure that if the Board approves the variance it does not affect the neighbor in an adverse manner.

Mr. Recupito stated that was a good point. Mr. Austgen stated they are making a developmental variance, if that was the pleasure of the Board. Mr. Recupito asked Mr. Wilkening and Mr. Kiepora if either of them had anything to add.

Mr. Wilkening stated the statement by Mr. Kil was true that the road is not the best. However, anything that the Petitioner does cannot exacerbate the problem. Mr. Wilkening discussed all the phases that the project would be reviewed at and if it was determined a drain needed to be put in, that is what the Petitioner would have to do, as a hypothetical. The water issue cannot be made any worse by the Petitioner.

Mr. Recupito asked if Mr. Starcevic was planning on building a house on this property, as that was mentioned during the public comment. Mr. Starcevic responded not in the near future, potentially in 5 years. Mr. Recupito asked Mr. Starcevic about a berm that was mentioned during the public comment. Mr. Starcevic responded they have planted flowers and built a flower bed berm that runs along 142<sup>nd</sup> Avenue, from the mail boxes to the hill. They have built a berm on the flower bed to attempt to mitigate water issues.

Mr. Wilkening stated when he requested the first deferral, he thinks the overall issue with this variance is the size of the garage. Mr. Wilkening informed Mr. Starcevic if the garage is approved and he would like to build a big house, it is against Federal law to create a hardship with one variance to come back for another variance. Mr. Recupito commented in the same.

Mr. Recupito stated his concerns are the same. The Petitioner has 2 variances that he is requesting and 7 measurements that don't fit the ordinance. Mr. Recupito continued he is glad the Petitioner came down on the height. Mr. Starcevic stated that reducing the height makes the second story useless. He does not think the second story should be considered in the square footage. Mr. Starcevic discussed the pitch of the roof for the second floor and the only place where he would be able to have storage. He has gone to his neighbors to try to work with them to come to an amicable agreement. They are trying to dress up the garage and with landscaping as well, and how he feels they are going to bring property value for the neighborhood up.

Mr. Recupito responded he did not doubt that it would be an improvement. However, the fact is a garage built within the Town Ordinances would be an improvement. The Board has to look at the Findings of Fact. Mr. Recupito read the Findings of Fact and which he has issues trying to determine if the last two items are being met. Mr. Recupito discussed if the ordinance is followed, the Petitioner can use the property, as it is zoned.

Mr. Starcevic stated they are not asking for something new. There are many oversized garages around the lake. Mr. Starcevic continued with they are asking for something that is larger than within the current zoning, so they don't run into issues with items left on their property. Mr. Starcevic discussed his lot and the restrictions on it due to it being a corner lot.

Mr. Recupito stated they have to follow the Findings of Fact, which is where he is having difficulties. Regardless of what has happened in the past, things are determined on a case-by-case basis. Mr. Starcevic stated they are not wanting to create any hardship. If there is a water issue, they are willing to address it.

Mr. Wilkening discussed the Petitioner does not have the amount of land that some of his neighbors have which makes this more complicated. Mr. Starcevic listed that he has 4 jet skis, a pontoon boat, a Master Craft speedboat, 2 golf carts, a riding lawn mower, 3 push mowers, 2 kayaks, multiple air mattresses and toys for the boats, bicycles, 3-wheel bicycle, attachment for the 4-wheeler to grade the land with, 4 lifts for the jet skis, lifts for all the boats, 120-foot dock, 2 trucks, a trailer, a camper. Mr. Recupito responded

with not all of that is going to fit into the garage he is proposing. Mr. Austgen requested that the items Mr. Starcevic listed off be recorded in the minutes.

Mr. Starcevic asked if picture documentation would help his cause. They are wanting to keep their stuff indoors and they are willing to work with the Town and their neighbors. Mr. Wilkening stated what he had discussed was that Mr. Starcevic wanted to put any water toy into the garage. Mr. Starcevic responded that was correct.

Mr. Recupito asked Mr. Starcevic if his current home has a garage. Mr. Starcevic responded in the negative. Mr. Recupito asked if the home he was going to build would have a garage. Mr. Starcevic responded it would depend. He would like it to, if he could. If he was to have the garage he is proposing, he would not need to build a garage with the house.

Mr. Recupito asked Mr. Bunge if he had any comments to add. Mr. Bunge responded he is concerned with the size. He understands what Mr. Starcevic is stating, but he has a hard time with the request. Mr. Recupito commented in the same that he has a problem with the size and asked Mr. Kiepura his thoughts. Mr. Kiepura responded his previous concern with the size was a potential living quarter. With the reduction of wall height, the Petitioner still has space up there. The first part of the Petitioner's request is a variance for a front yard and rear yard setback. They cannot approve that without saying that size building is okay. He does not see how they can vote without knowing the actual size of the building.

Mr. Recupito asked Mr. Austgen for his legal advice. Mr. Austgen responded he did not think the three questions outlined in IC 36-7-4-918.5 had been found. The property is an R2 Zoned parcel, located on the lake, with a home already existing. A garage can be built on it within the Zoning Ordinances. Mr. Austgen thanked Mr. Starcevic for disclosing what he is wanting to store. Mr. Wilkening stated it is known how much space all those items take up.

Mr. Recupito asked with the Findings of Fact, if the Board approves something and it does not meet all 3 items, does it put the Town at a financial liability for litigation. Mr. Austgen responded it potentially could. Those who speak publicly against an item could file a petition for judicial review. Mr. Austgen discussed this has occurred elsewhere and consideration needs to be made for each parcel.

Mr. Wilkening asked the Petitioner if the garage was 36 by 44 the other way, would that not work. Mr. Starcevic responded the problem would be the garage doors would have to be onto 142<sup>nd</sup> Avenue and he believes would create more hardships. Mr. Kiepura stated it would still be the same size. Mr. Wilkening agreed with Mr. Kiepura and stated the Petitioner would need less variances the other way and could potentially move it.

Mr. Recupito stated there are 2 items on this request, one being for the setbacks, which the setbacks are needed for the size of the garage. He is not sure if it is wise to allow for the setbacks without allowing the garage. Mr. Wilkening stated his understanding of the first item, is the setback of the existing house, and has to be established for creating the plat. The first item could hypothetically be voted on and approved and does not change anything for the second item. For example, if the setbacks are created and the Petitioner builds an ordinance compliant garage, it just needs to be in the setbacks voted upon. Mr. Austgen responded that is correct.

Ms. Murr clarified the house is currently 12.5 feet off of 142<sup>nd</sup> Avenue. Mr. Wilkening asked if that was approximately where the proposed new garage would be. Ms. Murr responded in the affirmative. Mr.

Starcevic stated the garage would actually be 3 feet further it at the 15-foot mark. They are asking for the 8-foot variance so they covered within the footprint. The actual building size is approximately 3 feet shorter making it a 15-foot setback. Discussion ensued about the setbacks of the proposed building and the setbacks requested.

Mr. Wilkening asked for the individual items being separated, if the first item is voted on and approved, that would allow him to get a plat. Ms. Murr comment on the same and it would have the approved building setbacks. Mr. Recupito responded if it is denied then the building would be denied as well. Mr. Wilkening asked if the items were separate. Mr. Austgen responded they are separate but the failure of the first item would cause the second to fail.

Mr. Recupito is suggesting they act on the building variance first unless counsel had a different opinion. Mr. Austgen stated he did not, but if they act on the first item before the second it would set the stage for the second item.

Mr. Recupito asked Mr. Kiepura his opinion. Mr. Kiepura responded after hearing the conversation, the petitioner does not have to build right on the setback line. The Petitioner would have to be within the setbacks. If the setback was voted on and approved on with the requested setbacks, all it means is that the Petitioner could build something within those lines. If the building complies with ordinances, the Petitioner could build it, otherwise he would need to convince the BZA and the Plan Commission to approve a reasonable request. Mr. Kiepura finished by stating that he believes the first item could be acted upon without having to approve or act upon the second item.

Mr. Recupito stated he understands what is being said. However, if they allow setbacks to be varied from without any plan, he is uncertain they could follow the Findings of Fact. Without any plans, how would the Petitioner prove to the Board that the setbacks are warranted by any hardships or anything. Discussion ensued regarding the setbacks, varying on setbacks with following the Findings of Facts and the potential for denying a petition.

Mr. Recupito stated he would like to act on the first item of the developmental variance to allow the petitioner to have a front yard setback of 8 feet off of 142<sup>nd</sup> Avenue and a rear yard setback of 8 feet. Mr. Bunge asked the Petitioner if he is going for a subdivision on this item. If this becomes a one (1) lot subdivision would the property line between Parcel 1 and Parcel 2 go away. Ms. Murr responded in the affirmative, it would be 1 lot. Mr. Bunge asked if the rear yard setback would be a moot point. Discussion ensued regarding the setbacks from the front yard off of 142<sup>nd</sup> Avenue and Greenleaf.

Ms. Murr stated the 8 feet would be the other line that is highlighted in the Board's packet. It would be between the Petitioner and his neighbor. Mr. Wilkening asked if the setbacks have anything to do with the easement for Greenleaf and the Town Engineer. Ms. Murr responded in the negative.

Mr. Recupito entertained a motion for this item. Mr. Wilkening made a motion to approve the first Developmental Variance to allow the Petitioner to have a front yard setback of 8 feet off of 142<sup>nd</sup> Avenue and a rear yard setback of 8 feet including all the Finding of Facts. The Findings of Fact are the petition will not be injurious to public health, safety, or morals; the use and value of adjacent property will not be effected in substantial or adverse manner, including what was heard at the meeting; the need for the variance does arrive from a particular condition that the property has from being long and narrow; the applicant established for the need for the variance due to the property being narrow and the applicant

does have a hardship; the approval would not have a substantial adverse effect on the Comprehensive Plan of the Town. The motion failed due to lack of a second.

Mr. Recupito entertained another motion for this item. None was had. Mr. Recupito asked Mr. Austgen due to lack of a motion, what would be the next action. Mr. Austgen advised that with the lack of a motion, the item can be deferred. Mr. Recupito entertained a motion to defer this item.

Mr. Starcevic asked before the deferral of the item would it help if he reduced the size of the building from 36 by 44 feet to 30 by 40 feet. Mr. Wilkening advised that they would need to see the structure with the new dimensions of the building with the change in square footage and height.

Mr. Recupito asked Mr. Austgen if the second request should be deferred as well. Mr. Austgen responded in the affirmative. Mr. Recupito asked Mr. Starcevic if he would like to defer this item. Mr. Starcevic responded in the affirmative.

A motion was made by Mr. Wilkening and seconded by Mr. Jackson to accept the request of deferral for both Developmental Variance requests. The motion passed 4 Ayes to 1 Nay by roll-call vote.

Mr. Jackson – Aye

Mr. Wilkening – Aye

Mr. Kiepura – Aye

Mr. Bunge – Aye

Mr. Recupito – Nay

**New Business:**

**1. Freeman – Developmental Variance**

**Petitioner: Daniel Freeman**

**Vicinity: 14702 Bryan Street, Cedar Lake, IN 46303**

Mr. Recupito advised that the first order of New Business was a Developmental Variance by Petitioner Mr. Daniel Freeman in the vicinity of 14702 Bryan Street. The Petitioner, Mr. Daniel Freeman, is requesting a Developmental Variance to build an addition with a 5-foot side yard setback that is consistent with the existing home. Mr. Recupito asked Mr. Austgen if all the legals were in order for this item. Mr. Austgen responded in the affirmative.

Mr. Recupito asked the Petitioner about his request. Mr. Freeman responded they are wanting to get the 5-foot variance off the side lot. Mr. Recupito asked Ms. Murr if she had anything from the Building Department. Ms. Murr responded that Mr. Freeman would like to build an addition on the back of his home, that is set 5 feet off of the side yard. The petitioner has also purchased and combined lots 107 and 108 to make a larger lot. What the Petitioner is asking for is a 5-foot side yard setback, which is consistent with his current home. The ordinance currently requires 8 feet.

Mr. Recupito asked Ms. Murr to clarify the lots. Ms. Murr responded with the Petitioner purchased lots 107 and 108 and is located in the Legacy Lots, where lots are 50 feet by 50 feet. The Petitioner has a total lot of 100 feet by 125 feet. The Petitioner is not compacting it in, he is wanting to stay within the existing building line of the home.

Mr. Wilkening thanked Mr. Freeman for including the proposed attached garage and asked Ms. Murr if the garage would need a variance of any kind. Ms. Murr responded it would not, just the addition with the 5-foot setback. Mr. Wilkening asked Mr. Freeman if he was sure he was 5-foot off the property line. Mr. Freeman responded in the affirmative.

Mr. Recupito asked if he was on the South Shore. Mr. Freeman responded in the affirmative. Mr. Recupito asked the Board if they had any further comments. None was had.

Mr. Recupito asked if there was any public comment for or against this item. No comment was had and Mr. Recupito closed the public portion for this item.

Mr. Recupito asked if it was a 10 by 18-foot addition. Mr. Freeman responded in the affirmative. The existing rooms in the house are only 10 by 11 feet, and that is not big enough for a master bedroom. The plan is just to make a master bedroom with a master bath.

Mr. Recupito asked if it was going to be a crawl basement. Mr. Freeman responded with it would be on a crawl. Mr. Recupito stated he has no problem with this, as the setback is already at 5 feet and it's not going to create any other setback or lot coverage issues.

Mr. Bunge asked how close the post structure is to the neighbor directly south of the Petitioner. Ms. Murr responded more than 25 feet. Mr. Recupito asked Mr. Kiepura if he had any comments. Mr. Kiepura responded that it is an existing nonconforming building and the Petitioner is wanting to follow the same building line, with the same set back. He does not see a problem with it.

Mr. Recupito asked Ms. Murr if she had anything else from the Building Department. Ms. Murr stated this plan has been reviewed by Ms. Bakker and Ms. Bilgri of the Building Department. Mr. Recupito asked if it was all good. Ms. Murr responded in the affirmative.

Mr. Recupito entertained a motion for this item. A motion was made by Mr. Wilkening and seconded by Mr. Bunge to approve the Developmental Variance, allowing the Petitioner to build 10 by 18 addition with a 5-foot side yard setback consistent with the existing home with all the Finding of Facts. The Finding of Facts are that the approval will not be injurious to public health, safety, and morals; it will not affect the adjacent property in an adverse manner; and the need arises with a particular condition on the property. The motion passed unanimously by roll-call vote.

Mr. Jackson – Aye

Mr. Wilkening – Aye

Mr. Kiepura – Aye

Mr. Bunge – Aye

Mr. Recupito – Aye

## **2. People's Bank – Developmental Variance**

**Owner: People's Bank SB**

**Petitioner: Vanadco Signs**

**Vicinity: 10205 133<sup>rd</sup> Avenue, Cedar Lake, IN 46303**

Mr. Recupito advised that the next order of business was a Developmental Variance by Petitioner Vanadco Signs on behalf of the People's Bank SB in the vicinity of 10205 133<sup>rd</sup> Avenue. The Petitioner is requesting a Developmental Variance to allow the Petitioner to have 1 monument sign with a digital message board



of 75 square feet and a total of 4 on premise signs. Mr. Recupito asked Mr. Austgen if all the legals were in order for this item. Mr. Austgen responded in the affirmative.

Mr. Tim Overmyer, Vanadco Signs, stated they are requesting a sign with the total square footage of 75 feet, this includes the message center. The Town Ordinance allows for 60 square feet, they are asking for an extra 15 square feet. They are requesting an electronic message center, and for two additional directional signs in and out of the bank. They have two entrances for the bank, one off of 133<sup>rd</sup> Avenue and off of King Street. For a total of 4 on premise signs.

Mr. Recupito asked Ms. Murr if she had anything from the Building Department. Ms. Murr responded it is exactly like the Petitioner presented. They are allowed a 60 square foot sign and they are requesting a 75 square foot sign. The sign the Petitioner is putting on the building meets the Zoning Ordinance. With the additional directional signage would put a total of 4 signs on the property.

Mr. Recupito asked the total amount of signs allotted by Town Ordinance. Ms. Murr responded with a 60 square foot for the first sign and 32 square foot sign for a second sign. Mr. Recupito clarified that the ordinance allows for 2 signs total on the property, and that the Petitioner is requesting 4 signs total. Ms. Murr responded in the affirmative.

Mr. Jackson asked if there were actually five signs. Mr. Overmyer responded there is the monument sign, one on the front of the building, and 2 double-faced directional signs. Mr. Recupito asked Ms. Murr where digital message boards fell under Town Ordinances. Ms. Murr responded it is a variance request on all message boards.

Mr. Bunge asked for the approximate location of the monument sign. Mr. Overmyer responded it will be on the property. The sign will be roughly centered on the building. They would meet the building setbacks. Mr. Overmyer asked Ms. Murr if the setback for the sign was 10 feet. Ms. Murr responded in the affirmative. Ms. Murr highlighted on the Lake County GIS map approximately where the sign would be located.

Mr. Wilkening asked how far the sign would be from the south sidewalk. Ms. Murr responded over 35 feet from the south side. Mr. Bunge asked if it was the same setback as the one for DeMotte State Bank. Ms. Murr responded in the affirmative.

Mr. Wilkening asked how the sign would affect the other businesses in the area. Mr. Overmyer responded that DeMotte State Bank's sign was going to be higher than the sign for the People's Bank, and there would be some distance between the two signs. Mr. Wilkening asked if the ATM is open 24 hours. Mr. Overmyer stated it would have a drive-up ATM at the back of the property that is open 24 hours. Mr. Wilkening commented on the entrance and exit signs being on all night.

Mr. Wilkening asked if the monument sign would be in front of the Summer Winds entrance masonry work. Ms. Murr responded the Summer Winds masonry work is in the middle of the roadway on King and the monument sign will be set back. Mr. Michael Shimala, People's Bank, stated the sign is going to be centered on their lot, so it'll be west of the Summer Winds sign.

Mr. Wilkening asked what time all the lights and signs, except the entrance and exit signs would be turned off. Mr. Shimala responded they could work on that, but lighting is on a photocell, so lighting on the property would be from a dusk to dawn setting. They can set for the sign to go off at 10 o'clock at night,

or a time therearound, so that it is not on all night. Discussion ensued about lighting and the ability to program the sign to turn off at a specific time. The lighting discussion also included considerations for the safety of the ATM and how many light poles were needed for the property.

Mr. Austgen asked if any of the criteria is written down anywhere. Mr. Wilkening responded in the negative, that he just brought it up. Mr. Austgen discussed how a bank he represented in a different town had set criteria for their lighting, and message boards. Mr. Overmyer stated he believed the Town had directions for that, but he was not certain on the specifics. Mr. Wilkening discussed federal regulations for message board signs. Discussion ensued about what federal regulations are and that Vanadco Signs no longer offers a "flashing" setting.

Mr. Kiepura asked why the sign has to be the 75 square feet versus the 60 square feet allotted by Town Ordinance. Mr. Overmyer responded due to the new logo for People's Bank, which needs a larger size. The message board is a standard size in most of their locations, which allows for the programmer ease of programming the sign. Mr. Kiepura stated he was not worried about the screen, more so the overall size of the sign. Mr. Overmyer responded they cannot change the logo size. The logo itself is only 50 inches, a little over 4 feet by 8 feet wide.

Mr. Recupito asked if there was any public comment for this variance. None was had. Mr. Recupito closed the public comment for this item.

Mr. Recupito stated he has no issues with the additional directional signs. He has an issue with the size and the message board. He discussed the use of message boards and the future of 133<sup>rd</sup> Corridor. Mr. Overmyer responded he understands and discussed that People's Bank is a community bank and they used to advertise in the papers and on the radio. However, today it is more important to advertise on premise due to being inexpensive and less people listening to the radio or reading the newspaper. The sign sounds larger than it is and is used for the bank products and community events. Mr. Overmyer discussed why message boards are the new normal for business signs including pricing reasons and advertising.

Mr. Recupito asked if the whole sign is going to be backlit. Mr. Overmyer responded for the People's Bank logo portion of the sign, the only thing that will be lit is the People's Bank. The white will not light, so at night it will only be the bank logo lit.

Mr. Wilkening asked if the Petitioner has done any signs these size for the People's Bank. Mr. Overmyer responded that Highland has one similar, but it might be bigger. Mr. Recupito asked if that sign was on US 41. Mr. Overmyer responded in the negative, it is on Ridge Road and discussed the sign in Schererville. Mr. Wilkening discussed that the picture rendering seemed to be proportionate. Mr. Overmyer responded in the affirmative. Discussion ensued about how the sign would look on the street and if the message would be the same on both sides. Discussion also ensued about the size of the Petitioner's size compared to DeMotte State Bank and Tech Credit Union's signs.

Mr. Recupito asked does someone from Town Hall reach out to businesses with message signs regarding community events. Ms. Murr responded in the affirmative or the Chamber of Commerce has on the Town's behalf.

Mr. Recupito discussed his opinion on the size of the sign and the message board. That if someone were to make a motion for this item, to include a time frame for the sign to run, as recommended by Mr.

Austgen. Mr. Kiepura stated the Town Ordinances discuss what to do for the digital sign. He expressed that not allowing them to have a digital sign would present a hardship for the business. It is advantageous for them to have the digital sign to advertise for their products, including interest rates or the like.

Mr. Wilkening asked Mr. Recupito if he was discussing setting a turn off time. Mr. Recupito responded in the affirmative and discussed the guidelines. The Board could go above that if needed and asked Mr. Austgen if that was correct. Mr. Austgen responded in the affirmative. Mr. Recupito discussed the style of the photo presented in the packet provided to the Board and simple word scrolling. Mr. Overmyer stated the photo is just an artistic rendering. The sign has the capability, but a majority of the time it's a message about a product or the like.

Mr. Wilkening commented that while it is a big sign, it is not as tall as other signs in the area. Mr. Bunge asked about the matrix size for the programming for the visual board. If it had to be reduced would the matrix be comparable for the programmer. Mr. Overmyer responded these are mass produced in sections, they drop 1-foot 8-inches down and can come in 1-foot 6-inches. The message center is 4 by 8 feet. Discussion ensued about the module sizes and how many lights are in a module.

Mr. Recupito entertained a motion for this item. A motion was made by Mr. Wilkening and seconded by Mr. Bunge to approve this Developmental Variance for 1 monumental sign with a digital message board of 75 square feet and a total of 4 on premise signs with all the Finding of Facts and with the condition that the monumental sign is to be turned on no sooner than 5 AM and be turned off by 11 PM with the other lights left on for safety for the ATM. The motion passed 4 Ayes to 1 Nay by roll-call vote.

Mr. Jackson – Aye

Mr. Wilkening – Aye

Mr. Kiepura – Aye

Mr. Bunge – Aye

Mr. Recupito – Nay

### **3. Michels – Developmental Variance**

**Petitioner: January and George Michels**

**Vicinity: 13939 Huseman Street, Cedar Lake, IN 46303**

Mr. Recupito advised that the next order of business was a Developmental Variance by Petitioner Ms. January Michels and Mr. George Michels in the vicinity of 13939 Huseman Street. The Petitioner is requesting a Development Variance to allow for the Petitioner to have a 10-foot rear yard setback to enclose the existing 30 by 36-foot patio to be a four season's room. Mr. Recupito asked Mr. Austgen if all the legals were in order for this item. Mr. Austgen responded in the affirmative.

Mr. Recupito asked Ms. Murr if she had any comments. Ms. Murr stated that Ms. Michels has a patio, which is shown on the survey in the Board's packet, that the Petitioner would like to enclose into a 4 seasons room. The Petitioner has provided the measurements that was given from the surveyor, which is the 10-feet on the south property line. Ms. Michels stated that 10-feet is also a railroad easement, even though the railroad is no longer there. Ms. Murr stated there is an additional easement between her property and the properties across the easement.

Mr. Kiepura asked if her property line is the easement where the railroad starts. Ms. Murr responded in the affirmative. Mr. Bunge asked if the easement had been a walking path. Mr. Wilkening responded it

had been a walking path for the railroad, so individuals could walk from the north to the depot. Discussion ensued about the walking path, its location on the easement, and the stairs in that area.

Mr. Kiepura asked if when the Petitioner builds this if she would have to tear up her patio. Ms. Michels responded in the negative. The patio was going to be the floor of the room. Mr. Kiepura asked what kind of footing would the room have. Ms. Michels responded the builders are going to put a footing down in the ground for the whole base of the building. Mr. Wilkening asked if the pavers were coming up then. Ms. Michel responded the pavers were the sided are going to be are already tore up. Mr. Wilkening asked if this is going to be a framed wood walls, or like a greenhouse. Ms. Michels stated it was going to be framed and connected to the house.

Mr. Recupito clarified that when she is saying 4 Seasons, it is essentially an addition onto the house. Ms. Michels responded in the affirmative. Discussion ensued regarding the easement on the Petitioner's property and if any attempts have been attempted at vacating some easements. Discussion also occurred regarding the walking path and if the tree in the easement fell, whose responsibility it would be.

Ms. Murr advised the Board that this application has been reviewed by both the Building Department and the Town Manager. One of the items that had been causing for the wait in the application was for the Petitioner to acquire Parcel 2, to ensure nothing was needed for lot width. Mr. Recupito asked if the Board had anything else for the Petitioner.

Mr. Wilkening asked Ms. Michels if she had acquired Parcel 2. Ms. Murr responded in the affirmative and the documentation is included in the file. Ms. Murr stated the lots have been combined and the documentation is on file. Mr. Austgen asked if the parcels were not combined by platting but if they were combined by Tax Key Number consolidation. Ms. Murr responded by Tax Key Number consolidation. Discussion ensued about how the 2<sup>nd</sup> parcel is shown on the Plat of Survey and if it would affect lot coverage.

Mr. Recupito asked Mr. Austgen with combining the Tax Key Numbers for the lots, how easy would it be to separate those. Mr. Austgen responded just as easy as it was to combined them. Mr. Recupito asked how they could make ensure the protection of the integrity of this variance. Mr. Austgen responded this goes with the Legacy Lot Policy and Procedures. So, if they have an improvement, addition, or new home, where it is two lots needing to be combined, there would be a platting exercise. Ms. Michels discussed her reasoning for purchasing the 2<sup>nd</sup> parcel, including the way her house is constructed.

Mr. Recupito asked if there was any public for this item. None was had and Mr. Recupito closed the public portion of the meeting for this item. Ms. Murr advised Mr. Recupito that Mr. Eberly was online via Zoom at 8:41 PM. Ms. Murr asked Mr. Eberly if he had any comments to add to this. Mr. Eberly responded in the negative. Mr. Recupito asked Ms. Murr if she had anything else from the Building Department. Ms. Murr responded in the negative.

Mr. Recupito asked if the Board had any more questions or comments for the Petitioner. Mr. Bunge asked for the depth of the lot, what should the setback of backyard be, as it looks like the house is already in the setback. If the depth of the lot is about 239 to 240 feet deep. Mr. Wilkening responded it appears to be 239 feet on the north side. Ms. Murr responded it would vary between 56 to 58 at 25%.

Mr. Bunge stated the Petitioner was already a nonconforming property. Mr. Recupito asked if the footprint was not expanding with the Petitioner's proposal. The room will be in the footprint that is

currently existing. Ms. Michels responded in the affirmative. It is going to be the exact same as the patio. Discussion ensued about the rear yard setback and the footing for the 4 Seasons room.

Mr. Recupito asked if the property to east of the Petitioner is a buildable lot. Ms. Murr responded in the negative.

Mr. Recupito entertained a motion for this item. A motion was made by Mr. Kiepura and seconded by Mr. Wilkening to approve the Developmental Variance to allow the Petitioner to have a 10-foot rear yard setback to enclose the existing 30 by 36-foot patio to be a four season's rooms with all the Finding of Facts. The motion passed 4 Ayes to 1 Nay by roll-call vote.

Mr. Jackson – Aye

Mr. Wilkening – Aye

Mr. Kiepura – Aye

Mr. Bunge – Nay

Mr. Recupito – Aye

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

Mr. Recupito advised that the next order of business was for the Resolution No. 2021-01 for the Board of Zoning Appeals Rules & Regulations. Mr. Recupito asked Ms. Murr about this item. Ms. Murr advised the BZA that they were provided a copy of the Rules & Regulations. This has been discussed for a few months. This is the finalized version coming from the updating of the Zoning Ordinance that is going through the Plan Commission. They are looking to see if they have any additional comments or feedback on the document. Additionally included, is the forms used for a petitioner to apply for a variance. It has been updated to include the Findings of Fact form. The ultimate goal is to have this in place and implemented by January 1, 2022.

Mr. Kiepura stated he had a question regarding the Secretary, under Article 2, Section 2, Item 4. It lists a secretary, but the BZA does not have a secretary, other than the Recording Secretary, and asked who the secretary is. Mr. Eberly responded that this change is allowing for the Board to select an Executive Secretary from among the Board. They would then have a Chair, a Vice Chair, and an Executive Secretary. In addition, they have the Recording Secretary. The Recording Secretary may or may not be a member of the Board and discussed in this instance the current Recording Secretary is not a member of the Board.

Mr. Recupito asked if this position is not required, because the wording is may appoint one. Mr. Eberly stated that is correct. Mr. Austgen stated it is in the Statutes and this is a form of a management tool.

Mr. Recupito asked for clarification on the wording on Article 3, Item 9, with the conflict of interest. The wording of this is if a Board member wants to remonstrate for or against an item, they can still do that, by removing themselves from the panel. Mr. Eberly stated he would expand on it and would also ask that Mr. Austgen weigh in on this item as well. The intent for this item is if a member has a conflict, they should remove themselves from the dais. They can sit in the audience and not participate in the discussion at all. That does not prohibit them from representing themselves on a variance request, but they cannot participate in the vote if a conflict exists.

Mr. Austgen commented in the same and that is what is stated in Indiana Code 36-7-4-909 and the Code is tracked closely in the proposed Rules & Regulations. He has had a few members of various boards ask

if they should leave the dais. Mr. Austgen stated they do not have to leave the dais, but they are not allowed to actively participate.

Mr. Recupito stated he was confused at the wording because the 2<sup>nd</sup> paragraph states that "A person, who has a conflict of interest, shall leave the Board table. [Such member may join the audience, but may not give testimony on the matter(s) before the Board]" and the 3<sup>rd</sup> paragraph states "Nothing in this Section shall prevent a Member of the Board of Zoning Appeals from presenting a petition on his/her own behalf, or request remonstrance to a Petition or Application, but Members shall not appear before the Board on behalf of others".

Mr. Austgen discussed that he is not fond of the use of conflict of interest, but he finds it unsettling that if a member of the Board steps off the dais and that they do not have a right to be a citizen and be on the record to state and advocate for their position. Mr. Recupito states he wants to preserve that. He feels as a property owner, that they should have that ability to speak on their own behalf. Mr. Austgen discussed a former Council member who would frequently step off the dais to discuss property matters.

Mr. Recupito stated that it seems these two paragraphs are conflicting and he wants to make sure that the member of the Board giving testimony is preserved. Mr. Austgen stated he agrees with Mr. Recupito.

Mr. Wilkening asked Mr. Eberly this is new but old and if there is a version of this that shows the new additions or corrections. Mr. Eberly responded he would look back to see what is on file. He understands what Mr. Wilkening is asking, because when he makes changes, he bolds, highlight, and underlines the changes. What they have in front of them the only thing that appears in that style is with Article 5, Section 2, Item A, Number 4. Mr. Eberly discussed the rest of the document being cleaned up and that he can send earlier versions of this document.

Mr. Eberly stated it sound like they are wanting the language that restricts the member from disqualifying themselves from the vote but still being able to remonstrate for an issue removed. Mr. Eberly asked Mr. Austgen this is when there is a conflict. Should a board member still be able to remonstrate when they have a conflict with the petitioner. Mr. Austgen responded in the affirmative.

Mr. Austgen stated they can not do both. Mr. Eberly states he does not see how you cannot advocate for it if you have a conflict, but you can advocate against it if you have a conflict. Mr. Wilkening stated if you are not voting, you become just a regular citizen then. Mr. Eberly stated he understood and he would get rid of that language and recirculate the Rules and Regulations once removed.

Mr. Wilkening asked Mr. Eberly if he had a hypothetical example. Mr. Eberly responded that nothing came to mind.

Mr. Recupito asked with Article 5, Section 2 with Notice Requirements, it appears the responsibility is being put on the petitioner to do some of the work that is currently being done by staff. Mr. Eberly responded this is one of the biggest changes in the Rules and Regulations. It does put the onus on the petitioner to do those things. It makes it the petitioner's responsibility for the proper notifications to be published and sent. In his experience, this has been the responsibility of the petitioner and not a staff-level responsibility.

Mr. Recupito discussed Article 5, Section 2, Item 5 requiring the petitioner to turn in evidence at least 5 business days prior to the public hearing. Would the staff have to do homework to get the list of properties

anyway. Mr. Eberly responded in the negative. Among the information that the petitioner would bring it would be the list of property owners and the receipts. These are items that Mr. Austgen reviews prior to each meeting or public hearing. Mr. Eberly continues that when Mr. Austgen advises the Board that the item has its legals in order, these are all things that are reviewed.

Mr. Recupito asked who in the Town makes sure that proper notice was given to the parties that need to legally be given notice are given proper notification. Ms. Murr responded that she would be the one ensuring it is being done. If not her, whoever is handling it. Ms. Murr noted that in the folders that Mr. Austgen receives, the petitioners are to bring in the mailing slips at least 5 business days prior to the meeting. Ms. Murr discussed what she reviews on the mailing slips and having the petitioner turn the slips in 5 business days prior to the meeting has been helpful.

Ms. Murr also stated that the list that would be given of parties to be notified is a certified list from Lake County. Mr. Kiepora asked if the petitioner does not have the proper documents turned in on time, they do not get put on the agenda. Ms. Murr stated that is correct.

Mr. Wilkening asked both Mr. Eberly and Ms. Murr if they were both good with not having a true definition of evidence. Would it be better if there is a checklist of what the petitioner needs to bring in. Ms. Murr responded if they go through the variance application, the application gives the procedures for what is required. Mr. Wilkening stated ok, so there is no interpretation of evidence.

Mr. Recupito asked what the reasoning is for putting the onus on the petitioner instead of staff. Mr. Eberly responded the first reason is he does not think staff should be responsible for doing this. This is something that the petitioner is asking for and it should be their responsibility to do. It was discussed several months ago, and it may have occurred at the Plan Commission level, having a conversation about this. Mr. Eberly further discussed the reason why the onus was placed on the petitioner.

Mr. Wilkening discussed he has had people in the past tell him they would like to just pay someone in Town just to do this for them, as it's very complicated and time consuming. Staff is very accommodating and lands up doing a lot of it anyway. He thinks Mr. Eberly's point is that staff could be doing other things. Discussion ensued at length regarding Article 5, Section 2, including having the petitioner get the required documents, how the petitioner gets the required documents, and taking photographs.

Mr. Eberly stated he would like to highlight there has been a reduction of newspaper publication from 2 to 1. This is in recognition of the fact that most individuals do not get their information from the legal notices in the newspaper anymore. Mr. Wilkening stated there is now a portion that says the sign must be placed on the subject property. Mr. Eberly stated the sign is only if it is commercial or industrial petitioner.

Mr. Recupito stated one more question he has is regarding Article 5, Section 1 Applications. Item C states "The Board shall set and hold a "Public Hearing" within sixty (60) days following the receipt of a properly completed application". Mr. Recupito stated his current understanding is it is on a 30-day basis. There is a deadline to get the application turned in by to be on the agenda for the next month. Ms. Murr responded in the affirmative. Mr. Eberly responded they are informed they have to have the application in by 1<sup>st</sup> Friday of the month. Ms. Murr commented in the same. Mr. Eberly further clarified the language for this came from the statutes.

Mr. Recupito asked hypothetically, if a petitioner put in an application by the 1<sup>st</sup> Friday of November, are they guaranteed to get on November's agenda, would they be on December, or would there be an option to put them on the January agenda. Ms. Murr responded it could be an option to put them on January. There are some communities that if they do not have enough business, they do not meet. However, the Board has to hear a completed application within 60 days. Ms. Murr continued she believes like Mr. Eberly stated this is state statute. Mr. Austgen stated that it is not statute. Ms. Murr stated she understood. This would ensure that the application cannot keep being deferred if they are the only business item.

Mr. Recupito discussed he was not certain if this could be used as a tool to attempt to shorten the meetings and asked if it would be possible to do that with this item. Mr. Eberly responded he and Mr. Austgen had discussed this a while back when there had been 12 to 13 petitions on the agenda. He had asked at the time if there was a way to limit these things. The conclusion was as long as they meet the deadlines for submittals, the Town cannot limit the number of petitioners on an agenda. Mr. Eberly asked Mr. Austgen if that was correct. Mr. Austgen responded in the affirmative. Discussion ensued on using the 60-Day versus the 30-Day schedule and how they would differ.

Mr. Wilkening asked if there were any concept plans at the BZA. The answer was in the negative. Mr. Austgen stated the BZA is an administrative quasi-judicial body. Mr. Wilkening stated he was just thinking for some instances if staff has a feel for an item, perhaps it could be presented as a concept. Ms. Murr discussed Site Plans going to the Plan Commission. Mr. Wilkening stated he is discussing BZA items that could be problematic, something they do not see very often. Discussion ensued about bringing concept plans to the BZA.

Mr. Recupito asked Mr. Austgen for his opinion on this matter given that it is a legal matter. Mr. Austgen responded he is troubled by what has been discussed. He has been present for a long time and sat through a lot of meetings at the BZA level. He knows that most of the people that come to the BZA are not sophisticated business people. They are citizens of Cedar Lake and do not have an extensive amount of experience with the process. That as a tax payer, he thinks the staff should be doing the work. Staff has been added in the last year.

Mr. Kiepora clarified that Mr. Austgen thinks the staff should be doing the work. Mr. Austgen responded in the affirmative. They should be making this a place where people can come to for assistance in this process. Mr. Wilkening asked Mr. Austgen at what point is the staff doing the land design on this. Mr. Austgen stated the staff shouldn't be doing land designing. They should be accepting the application, perhaps with some guidance on what will be looked for. Discussion ensued on this including what staff is currently doing and what the petitioner would be doing instead of staff, and various opinions of members of the board and Town staff.

Mr. Recupito asked Mr. Eberly does this mean that going on-site, taking pictures to submit to the Building Department to give to the BZA will be on the petitioner. Mr. Eberly responded it would be in the petitioner's best interest to do that if it makes their case clearer and that Ms. Murr will go out to take pictures on some to prepare for the petition. Mr. Eberly concluded he thinks it would be in the best interest of the petitioner to take photographs though. Mr. Wilkening stated he agreed with Mr. Eberly it is in their best interest but that Ms. Murr cannot go take pictures of some and not others. It should be all or none. Ms. Murr used the example of the house on Lynns way. The Petitioner was one of the last to put up a fence and took a picture from her upper story window, which would give a completely different



perspective of a picture then she could take. Discussion ensued about the differences of pictures and if the petitioner could omit photographs that could weigh on their decision one way or another.

Mr. Recupito stated he does not see a giant benefit if the staff was still going to have a lot of things to do anyway. Ms. Murr responded she believes the benefit is with the budget. The petitioner is going to get billed from the newspaper for the ad. Ms. Murr described the process of sending the ads to the newspaper and the billing process. Mr. Kiepora stated if the petitioner does all this work, it eliminates work on the staff's part. However, the staff will still have to conduct follow up work. The point is it will be less work for petitions and more free time to do other important things in the Town office.

Mr. Wilkening stated he agrees with Mr. Recupito on the Building Department providing unbiased pictures. Every time pictures have been asked for clarification from the Building Department, it has always been unbiased. He thinks that the incidental things that anyone can do, should be done by the petitioner. Ms. Murr asked what would be the difference between her going and getting the list of adjacent properties from Lake County or the petitioner. Mr. Wilkening responded he agrees, as long as the instructions are clear. He just does not think the petitioner should be taking their own picture. Further discussion ensued on the petitioner taking their own pictures and members of the Board going and looking at some of the properties that are on the agenda.

Mr. Recupito entertained a motion to defer this item. A motion was made by Mr. Wilkening and seconded by Mr. Bunge to defer Resolution No. 2021-01, Board of Zoning Appeals Rules & Regulations to the November meeting and to have a report from legal on the Board of Zoning Appeals Rules & Regulations in its entirety. The motion passed unanimously by roll-call vote.

Mr. Jackson – Aye

Mr. Wilkening – Aye

Mr. Kiepora – Aye

Mr. Bunge – Aye

Mr. Recupito – Aye

Mr. Kiepora asked Ms. Murr if she could provide a copy of the checklist given to the petitioners. Ms. Murr responded she did not have one yet as this was not approved, but she could create one. Mr. Kiepora commented on the same and asked if she could create the list for the Board to review. Discussion ensued about the application for the BZA that was included in the packet.

#### **UPDATE ITEMS:**

Mr. Recupito asked Mr. Eberly if in November he was going to provide the BZA with a list of his reviews of variances granted since 2018. Mr. Eberly responded in the affirmative. It is going to be provided to the Board at least a week before the meeting. Mr. Recupito asked if it is going to be all variances or just special uses. Mr. Eberly responded it is everything since January 1, 2018 to present. Including variances that were granted that people never ended up doing. It will be a report on each variance granted and whether they are compliant or not compliant, and their status. The years 2018 and 2019 have been completed, and into March or April of 2020 has been completed. Mr. Eberly stated he just needs to complete the year 2020 and get it current through 2021.

Mr. Eberly stated that one of the items he would like to mention about the Rules & Regulations still have language in regarding special exceptions. At the Plan Commission level, they are revising the Zoning

Ordinance and they are planning on taking out special exceptions and not having them anymore. Until that happens, special exceptions have been left in the Rules & Regulations currently.

Mr. Recupito asked if that would be the only change in the packet presented to the Board with the Rules & Regulations. Mr. Eberly responded in the affirmative. Mr. Recupito thanked Mr. Eberly.

Mr. Wilkening asked Mr. Eberly if the special use was going to be gone all together. Mr. Eberly responded in the affirmative. Mr. Wilkening clarified if it was because the petitioner going to the BZA made it a special use. Mr. Recupito stated he thought it was a special exception. Mr. Eberly stated statutes uses special uses and special exceptions. They are essentially the different verbiage for the same action. There had been a discussion at the Plan Commission level that they thought eliminating the special use or special exception was the correct way to go.

Mr. Wilkening asked Mr. Eberly what they were going to use then. Mr. Eberly responded it would just be a use variance. Mr. Recupito stated he thought the goal was that anything that was under a special exception was going to be allowed without BZA approval. Mr. Austgen responded in the negative and special exception is a permitted use in a zoning district classification, provided that use conforms to and complies with the regulations for that zoning district. Mr. Austgen discussed what he had discussed with special uses with the Plan Commission and its process versus having it come to the BZA and obtaining a favorable or unfavorable recommendation to the Town Council.

Mr. Wilkening asked if the Findings of Fact are everything that is spoken. Mr. Austgen responded not unless the Board specifically requires it. Mr. Austgen discussed specific examples that he has done in the Plan Commission with minutes and approvals for PUDs and the creation for certifications. Mr. Wilkening asked if in order to be thorough in a motion for the BZA, it needs to include the minutes from the meeting. Mr. Austgen responded in the affirmative and discussed examples that has been brought forth to the BZA, such as the Starcevic petition. Mr. Wilkening responded with that example, if the petition was granted and the petitioner stated all the items listed were going to be in the garage, and they are not, he would no longer be in compliance with his variance. Mr. Austgen stated that is correct.

Mr. Recupito asked how that would affect the Recording Secretary and how thorough the minutes need to be. If they have to fall back on something for enforcement, the minutes are not verbatim. Mr. Austgen stated the minutes should not be verbatim. There are times when petitions have different degrees of difficulties, complexities, or sophistication. Those petitions should have a very detailed recitation of what occurred during the meeting on the minutes. Mr. Kiepura stated he finds that what Ms. Margaret Abernathy was doing, and what Ms. Ashley Abernathy is currently doing for minutes are pretty thorough on what occurs at the meeting. Discussion ensued about meetings and the typing of the minutes.

Mr. Recupito asked if there were any other update items. Mr. Wilkening stated there had been an email regarding an old approval on a property on Morse Street and asked is it being followed up on by staff. Mr. Bunge asked if it was the paving approval. Mr. Wilkening clarified it was for the Tastee Top Parking Lot not being owned by the same people anymore and the Marina up the street. Ms. Murr responded she has had communication on the Marina from someone who is putting plans together on it. They are preliminary plans. Discussion ensued regarding this property and if there was a timeline.

Mr. Wilkening asked if there was any update on the parking lot item. Ms. Murr stated that Mr. Eberly has reached out to the property owner and she anticipates it will be on the update next month.

Board of Zoning Appeals

October 14, 2021

**PUBLIC COMMENT:**

Mr. Recupito opened the floor up for public comment. None was had.

**ADJOURNMENT:**

Mr. Recupito adjourned the meeting at 9:45 PM.

**TOWN OF CEDAR LAKE BOARD OF ZONING APPEALS**

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Nick Recupito, Chairman

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Jeff Bunge, Vice Chairman

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John Kiepura, Member

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Jerry Wilkening, Member

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Ray Jackson, Member

ATTEST:

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Ashley Abernathy, Recording Secretary

*The Minutes of the Cedar Lake Board of Zoning Appeals are transcribed pursuant to IC 5-14-15-4(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 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 section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication.*

*Cedar Lake Board of Zoning Appeals: October 14, 2021 Minutes*

Board of Zoning Appeals

October 14, 2021

**From:** Elisabeth Rosenak <elisabeth.rosenak@gmail.com>  
**Sent:** Wednesday, October 13, 2021 10:30 AM  
**To:** Jill Murr <jill.murr@cedarlakein.org>  
**Subject:** Letter of Support for Zoning Appeal at 7615 W 142nd Avenue

Hi Jill,

Hope this email finds you well!

My husband, Craig Wenger, and I are writing to confirm our support for Tom Starcevic's appeal to build the garage to the specs outlined in the notice of public hearing letter sent to our residence. We're their direct neighbors, address 14208 Greenleaf Place and feel the structure will enhance the look of the neighborhood.

Please let me know if any additional information regarding our support would be helpful.

Thank you,  
Elisabeth