



CEDAR LAKE BOARD OF ZONING APPEALS MINUTES
CEDAR LAKE TOWN HALL, 7408 CONSTITUTION AVENUE, CEDAR LAKE, INDIANA
NOVEMBER 10, 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, November 10, 2021, with its members attending on-site. The Pledge of Allegiance was recited by all. Mr. Recupito commented tonight's meeting was held in observance of Veteran's Day and took a moment to thank all of our Veterans for their service.

ROLL CALL:

Members Present: Ray Jackson; Jerry Wilkening; John Kiepura; Jeff Bunge, Vice Chairman; and Nick Recupito, Chairman **Also Present:** Ryan Deutmeyer, Town Attorney; Jill Murr, Planning Director; Rick Eberly, Town Manager (via Zoom); and Ashley Abernathy, Recording Secretary. **Absent:** David Austgen, Town Attorney.

APPROVAL OF MINUTES:

Mr. Recupito asked the Board if they had any changes or corrections needed for the October 14, 2021 minutes. None were had.

Mr. Recupito entertained a motion to approve the Minutes of October 14, 2021. A motion was made by Mr. Bunge and seconded by Mr. Kiepura to approve the Minutes of October 14, 2021. The motion passed unanimously 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, 5706 N. Rockwell, Chicago, IL 60659

Vicinity: 7615 West 142nd Avenue, Cedar Lake, IN 46303

Mr. Recupito stated the first item of business was Old Business with a Developmental Variance for Petitioner Mr. Tom Starcevic in the vicinity of 7615 West 142nd Avenue. The Petitioner is requesting two Developmental Variances, the first is 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 second request is for the Petitioner to construct an 1,862 square foot garage with a second-floor of 1569 square feet, for a total square footage of 3,431 feet, a first-floor wall height of 12 feet 10 inches, and a height of 28 feet 8 inches in a front yard. This item was deferred from September 9, 2021, and October 14, 2021. Mr. Recupito asked Mr. Deutmeyer if the legals are in order. Mr. Deutmeyer responded in the affirmative.

Mr. Starcevic stated they have submitted new plans reducing the entire size of the project to just over 1200 feet, eliminating the second floor. The variance request is different then what is on the agenda and the Board should have copies of the new proposal.

Ms. Murr asked Mr. Starcevic is the outside going to be 30 by 40 feet or 30 by 41 feet to provide some clarity for the outside dimensions. Mr. Starcevic responded they are looking at 30 by 41 feet for a total of 1,230 square feet.

Mr. Recupito asked about the overall height of the structure and the height of the sidewalls. Mr. Starcevic responded the overall height is going to be 22 feet and they are still requesting 12 and a half feet. Mr. Recupito asked for clarification on no usable square footage upstairs. Mr. Starcevic stated there will be none, they have eliminated the exterior staircase that led to the second floor.

Mr. Recupito asked Ms. Murr if she had anything else from the building department. Ms. Murr stated she wanted to confirm the height of the garage doors. Mr. Starcevic stated the height of the garage doors will be 10-foot doors on the east and west side.

Mr. Bunge asked if Mr. Starcevic was requesting 22 feet up to the peak of the roof but no second floor. Mr. Starcevic responded in the affirmative.

Ms. Murr stated that would make the total square footage of the building 1,230 square feet, with 22-foot height, and the 12-foot sidewalls to accommodate for the doors. Ms. Murr advised the Board it had been left on the agenda how it had originally been advertised for. The first request regarding the 8 feet setback, while the garage will be 16 feet from the property line. The building line for the house is set back approximately 12 feet from the property line on the Preliminary Plat provided to the Board. Allowing that building to be legal and conforming to the setbacks. Ms. Murr asked Mr. Starcevic if he wanted to leave the building setback line at 8 feet off of 142nd Avenue. Mr. Starcevic responded he wanted to keep it at a building setback that allows them to achieve conformity. Mr. Recupito commented he is asking for 8 feet on both sides, and he probably won't need the 8 on both sides.

Mr. Jackson asked what was the original footprint. Mr. Starcevic responded it was 44 by 36 feet.

Mr. Recupito asked Mr. Wilkening and Mr. Kiepura where this item was at with the Plan Commission. Mr. Wilkening stated this was the first he had seen these numbers. There does seem to be some work done to address everyone's concerns. There is the issue of the dedication on Greenleaf that still needs to be dealt with at the Plan Commission, unless it is a contingency on approval.

Ms. Murr commented the item at the Plan Commission has been deferred pending what is approved at the BZA for his plat regarding setbacks. Mr. Wilkening discussed that part of Greenleaf is on the Petitioner's property and the Town Engineer would like a roadway dedication. Mr. Recupito asked that the 30-foot setback off of Greenleaf and this is not a variance being requested. Ms. Murr commented it was not a variance request. Discussion ensued about the roadway dedication and the 30-foot setback is meeting Town Ordinance.

Mr. Recupito asked the Board if they had any other comments for the Petitioner. Mr. Wilkening asked what the sidewall height is going to be. Mr. Starcevic it would be 12 and a half feet. Ms. Murr commented the submitted request lists the sidewall heights at 12 feet 10 inches.

Mr. Bunge asked if he was not requesting the second story, would his sidewall height go up to the 22 feet. Mr. Recupito responded in the negative because of the peak and the roof rafters. Mr. Bunge commented wouldn't it be 18 or 19 feet then for the sidewalls. Mr. Recupito asked Mr. Starcevic what type of roof pitch he was going to use. Mr. Starcevic responded he was looking at doing a 7/12 pitch.

Mr. Bunge asked what the gable height was on the last design. Mr. Starcevic responded it was 28 feet 6 inches. Mr. Bunge clarified it was down to 22 feet for the new design. Mr. Starcevic responded in the affirmative. Mr. Wilkening asked if there was no second floor anymore, it would just be wide open. Mr. Starcevic responded in the affirmative. Mr. Bunge asked if there was going to be a loft. Mr. Starcevic responded in the negative.

Mr. Recupito asked if the Board had any more comments at this time. None was had.

Mr. Recupito opened the floor for public comment at this time.

Ms. Linda Mason stated she lives directly north of where Mr. Starcevic would like to build and she would be looking out her front door and seeing his building. This is her problem with the building, as it has been in the past, is the size of the building. She stated she observed on the agenda in no event shall such building exceed 14 feet in height. She is leaving it up to the Board to make the decision and just wanted to express how she felt.

Mr. Recupito closed the public portion of this item.

Mr. Recupito asked Ms. Murr if she had any further comment from the Building Department. Ms. Murr responded the information she presented to the Board was confirmed. She just needed to confirm the height of the doors and the sidewall height.

Mr. Recupito asked the Petitioner is there a reason for the height if there is going to be no useable storage up top. Mr. Starcevic responded they are looking for the architectural aspect of it. The house to the south of him is only 24 feet from his house and is a solid brick wall that he has to look at. His neighbor is 70 feet away from his proposed structure. He wanted to note for the record his neighbor's house is the length of 3 quarters of his property is less than 25 feet from his front door and what she is opposing is a structure

that will be over 70 feet from her front door. They want to have an appealing structural building, and they feel the flat roof is not fitting for a residential area and looks industrial. However, if that is the request of the Town, they would be willing to do that.

Mr. Recupito asked what is the standard roof pitch. Mr. Kiepura responded the 7/12 is what it should be, and they wouldn't want to go under that. They can put up 4/12 or 5/12 but he would agree that 7/12 is the right pitch. Mr. Recupito asked if the other pitches are doable or would they have problems. Mr. Starcevic responded once he gets to a 30-foot span, he has to get that height otherwise he would be replacing shingles every 5 years.

Mr. Kiepura stated the rafters will be built to specification, where there is a dead load and a live load that they have to be regardless of the pitch of the roof. He personally thinks a 7/12 pitch is better because the quicker the water is removed the longer the roof is going to last. Mr. Kiepura asked what are the heights at the eaves after the sidewall height. Mr. Starcevic responded his eave is around 13 feet. Mr. Kiepura asked if he would be 14 feet tall at his eaves. Mr. Starcevic responded in the affirmative.

Mr. Kiepura commented when the Petitioner does the run, his rise is what is giving him the additional 8 feet and the only way to bring that down is to change the pitch to a 5/12 or go with a flat roof. Discussion ensued about having a flat roof and the look it would give the property.

Mr. Kiepura commented the Petitioner has done a lot and the neighbor would not be looking directly at a 22-foot building, but the eave edge of the roof. Mr. Kiepura stated he did not know if the building would block her view of the lake. Mr. Starcevic stated it would not block her view of the lake and demonstrated on the Lake County GIS projection where his proposed garage would be and where his neighbor lives.

Mr. Wilkening asked if the inside is going to be wide open. Mr. Starcevic stated there would be the rafters. Mr. Kiepura asked if it would have a ceiling. Mr. Starcevic responded part of the garage will be open and part of it will have a ceiling. Mr. Wilkening clarified there will not be a second story. Mr. Starcevic responded in the affirmative.

Ms. Murr asked if it would be similar to an attic. Mr. Starcevic responded in the affirmative and they want to try to get insulation in there so they do not have winterize all of their equipment. Discussion ensued with the Board regarding a previous approval of a garage on the west side of the lake in Meyer Manor.

Mr. Recupito asked Mr. Starcevic about his desire to build a house in the future. Mr. Starcevic started he would like to build a house and that is why they are downsizing the garage. They know they are asking for a variance on the square footage of the garage, but the ordinance allows for 1,000 square feet and they are asking for 1,230 square feet. Mr. Recupito stated he just wanted to clarify whatever he does if he gets approval, when he goes to build a house and if the garage causes a need for a variance for the house for any reason, it will be make it difficult for them to consider.

Mr. Starcevic stated he feels he is being told that he would not be able to build a house. Mr. Recupito clarified that is not what he is saying. What he is saying is if the lot coverage exceeds. Mr. Starcevic stated they have the biggest lot in Wilson's Subdivision and believes he should be able to build a 2,500 square foot house. Mr. Recupito assured Mr. Starcevic he was just looking out for what he wants to do in the future. Mr. Wilkening clarified what Mr. Recupito is talking about is it is against the law to make decisions on the back of a BZA approval due to self-inflicted hardship and Mr. Deutmeyer can attest to this. Mr. Deutmeyer commented one of the criteria for a Variance of Use is a hardship, there has to be some

hardship to the peculiar piece of property. If the Petitioner creates the hardship, he does not know any BZA that would accept it as an actual hardship. Discussion ensued about requesting a variance for a self-inflicted hardship.

Mr. Wilkening asked what the maximum size for an accessory building. Mr. Bunge responded it is 1,000 square feet for the Petitioner's size lot. Discussion ensued about the new sizes of the building and what the motion would require.

Mr. Recupito asked the Petitioner if he is requesting a 1,230 square foot building, with a height of 22 feet at the peak, 12-foot 10-inch sidewalls. Mr. Starcevic responded in the affirmative. Mr. Bunge stated he is requesting for it to be in the front yard as well. Mr. Recupito discussed the setbacks requested and that the Petitioner would have more room due to narrowing the building down.

Mr. Recupito asked the Petitioner if there was no second floor. Mr. Starcevic responded in the affirmative. Mr. Recupito asked the Petitioner if there was going to be water running to the garage. Mr. Starcevic responded they are going to have a half bath in the garage.

Mr. Bunge asked if Ms. Murr's recommendation was to set the building line at 12 feet. Ms. Murr responded at a maximum of 12 feet and the Petitioner had requested the 8-foot setback. Mr. Recupito asked if that was the maximum or the minimum. Ms. Murr responded the house sits at 12.3 feet back from the road, and she would not make the setback off of 142nd Avenue 16 feet to where the garage is going to be built to allow for the existing house. Discussion ensued about the potential building setback line and the Petitioner's requested setbacks.

Mr. Wilkening discussed why the sidewalls are set to 10 feet high in the Ordinance and asked the Petitioner if he plans on having any lifts in the garage. Mr. Starcevic responded in the negative.

Mr. Recupito advised the Petitioner he was happy to see the reduction in the size but he is still having issues with the overall height of the garage.

Ms. Murr stated lot coverage had been brought up and the Petitioner's lot coverage based on the square footage based on the property record card from Lake County for the existing house and the building that is being requested, the lot coverage would be 13.77% lot coverage. Discussion ensued about the amount of lot coverage, the coverage left for the Petitioner to use for a house, and how lot coverage is determined.

Mr. Jackson asked what was the other reason for the extra height. Mr. Starcevic responded in order to achieve the roof pitch they desire; it raises the height of the building. Mr. Recupito asked Mr. Kiepura his opinion on the roof and the peak. Mr. Kiepura described how the pitching for the roof works and there are a variety of factors that go into determining the height and pitch of a roof.

Mr. Kiepura asked the Petitioner why he needed the height and size of the garage. Mr. Starcevic responded he doesn't need it for the height, and he isn't requesting it for the inside height. He is requesting it to get the pitch on the roof and he needs to be able to pull something through the door that is 10 feet tall. He has a pontoon, a boat, a camper, and various other items he would like to be able to pull through the garage.

Mr. Kiepura discussed the plans they had been sent for the Plan Commission had shown the width and length of the house, but not the height and that the drawings do not show what Mr. Starcevic is talking

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about. Mr. Starcevic advised that when they modified the drawing to fit their scale, they eliminated items from the prints and adjusted the plans accordingly. Discussion ensued on the height of the eaves, the potential pitch of the roof, and the reason for the height of the building.

Mr. Bunge asked Mr. Deutmeyer with the way it is advertised with the 12-foot 10-inch wall height and if they height is considered being adjusted, would the matter need readvertised. Mr. Recupito advised Mr. Bunge there was not a discussion on raising the sidewall height. Mr. Deutmeyer commented on the same and stated if there is a substantial deviation to make a building bigger then it would need to be readvertised. Mr. Recupito asked the Petitioner that there was no sidewall height increase. Mr. Starcevic responded in the affirmative.

Mr. Recupito asked if there were any comments or questions from the Board for the Petitioner. Mr. Wilkening asked for clarification on what the sizes of the building were for any motion. Ms. Murr responded the first portion is the 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 second portion is to allow the Petitioner to construct a 1,230 square foot garage, with a height of 22 feet and a sidewall height of 12-foot 10-inch in a front yard. Mr. Recupito thanked Ms. Murr and advised this would be a Board decision. Ms. Murr clarified if they were being considered as 2 separate items. Mr. Recupito responded in the affirmative and stated last time they did the setbacks first and the building second. Mr. Deutmeyer stated it makes sense to act on the items in the order they are listed on the agenda.

Mr. Recupito entertained a motion for the first Developmental Variance regarding the front yard setback of 8 feet off of 142nd Avenue and a rear yard setback of 8 feet. A motion was made by Mr. Wilkening and seconded by Mr. Bunge to approve the Petitioners request to have front yard setback of 8 feet off of 142nd Avenue and a rear yard setback of 8 feet with 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	Aye
Mr. Recupito	Nay

Mr. Recupito entertained a motion for the second Developmental Variance regarding the Petitioner to construct a 1,230 square foot garage, with a height of 22 feet and a sidewall height of 12-foot 10-inch, in a front yard. A motion was made by Mr. Wilkening and seconded by Mr. Bunge to approve allowing the Petitioner to construct a 1,230 square foot storage building with no second floor, with a height of 22 feet overall at the peak, and a sidewall height of 12-foot 10-inch, in a front yard with Finding of Facts, to include all the discussion matters, questions and answers with the Petitioner, and to include the Greenleaf criteria being met with the Plan Commission. The motion passed 3-Ayes to 2-Nays by roll-call vote:

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

New Business:

1. Hanover Development – Developmental Variance

Petitioner: Hanover Development LLC

Vicinity: 11689 West 124th Place, Cedar Lake, IN 46303

Mr. Recupito stated the first item of new Business was a for a Developmental Variance request from Petitioner Hanover Developmental LLC in the vicinity of 11689 West 124th Place. Mr. Recupito stated the Petitioner is requesting a Developmental Variance for a 27.7-foot front yard setback in a PUD Zoning District. Mr. Recupito asked Mr. Deutmeyer if the legals were in order for this item. Mr. Deutmeyer responded in the affirmative.

Mr. Doug Rettig, DVG Team, stated they had done the surveying and engineering for the home in question and Mr. Randon Devenport, Olthof Homes, who was the developer of the homes is present with him as well.

Mr. Recupito asked the Petitioner to explain the situation. Mr. Rettig asked the Board if they needed copies of the site plan and handed copies to the members of the Board. Mr. Rettig stated on the first page is the original site plan for this home, there had been some confusion for the size of the front porch. Olthof offers approximately 5 different porches, so when it was first drawn the draftsman used the smallest porch. To reflect the correct porch, the drawing was changed and a bigger porch drawn on. To accommodate the bigger porch, the house would have to be pushed back. The house was drawn correctly, the calculation for excavation was done correctly. The mistake that occurred is the field crew never moved the stakes. The house had been staked for the first rendering of the house. This was not discovered until the final survey when they discovered the porch was over the building line. This is why they are here tonight, is to request forgiveness and permission to allow the porch to be over the building line due to drafting and surveying error on their part.

Mr. Recupito asked Ms. Murr if she had anything to add. Ms. Murr responded in the negative.

Mr. Recupito asked who is Hanover Development LLC. Mr. Rettig responded they are the developers of Birchwood, which is a division of Olthof Homes.

Mr. Recupito asked if the house was complete. Mr. Rettig responded in the affirmative. Mr. Recupito asked if there was any way to avoid this in the future. Mr. Wilkening asked if there is not a thought of checking the footing. Mr. Rettig responded they work in several areas and a couple of them ask for the footing to be checked, but Cedar Lake does not require this.

Mr. Wilkening asked Mr. Deutmeyer if this was a reasonable condition. Mr. Deutmeyer responded it would be on a Plan Commission approval. Mr. Wilkening clarified was if this was a condition of a variance for this item. Mr. Deutmeyer responded he thinks they can ask and there are other considerations that could occur, such as monetary related to this incident. Their recommendation is to defer this item so the appropriate consideration can be made to rectify this problem and prevent it from occurring again.

Mr. Kiepura stated right now they have a covered concrete porch and asked the Petitioner if that was correct. Mr. Rettig responded in the affirmative. Mr. Kiepura asked if it is 2.5 feet over. Mr. Rettig stated it was over the build line by a little over 2 feet.

Mr. Kiepura stated his thoughts are it's a little over 2 feet, an explanation was provided and he can understand how things happen. Mr. Wilkening's question of preventing it in the future is a good question and they need to figure that out, but not tonight. His opinion is that they approve the item.

Mr. Wilkening asked Mr. Deutmeyer if their recommendation is to defer this item is for further discovery. Mr. Deutmeyer responded some assessment needs to go into the BZA's question and how to deal with these situations and there was a similar situation that has occurred in the past. Their suggestion to the Board is to give the same consideration for this item as well.

Mr. Kiepura asked if they were deferring this item. Mr. Deutmeyer stated that is their suggestion and it is up to the Board. Mr. Kiepura asked what the deferral would be for. Mr. Deutmeyer responded to assess what is appropriate in this circumstance. There is not a request to tear it down. However, there is an error there and it is appropriate to consider a penalty to be applied to this situation. Discussion ensued about the previous property an item like this occurred on and if there was occupancy in the house.

Mr. Rettig stated this was discovered around October 11 when they were asked to do the final survey of the property. They had completed the final survey and it was brought to his attention this occurred. They reviewed the paperwork and discovered the building stakes had not been moved and it had been an honest mistake.

Mr. Recupito stated he understands that but he wants to know how occupancy was granted if it was not in compliance. Ms. Murr explained there had been as-built bonds being collected and then the as-builts being reviewed by the engineer. Discussion ensued about updates occurring with the bonds due to internal updates.

Mr. Wilkening asked if the Developers are given a timeline on when as-builts are reviewed. Ms. Murr asked if Mr. Wilkening is talking about the Building Department's review. Mr. Wilkening responded in the affirmative. Ms. Murr responded she did not know that answer.

Mr. Eberly stated to follow-up on Mr. Wilkening question, they are changing the internal policy where they are requiring the as-built survey to be turned in before occupancy can be granted. Mr. Kubiak and himself just discussed that this week. They are also changing the Zoning Ordinance, in which they are going to be requiring a Foundation Survey. Currently, a Plat of Survey is required with the application and an As-Built Survey is required at the end of the job. They are going to be requiring an escrow be paid for at the time of application, that is refundable to any builder provided they do not occupy the structure before getting an occupancy permit.

Mr. Eberly stated he understands Mr. Rettig's explanation and respectfully disagrees with Mr. Deutmeyer. He does not believe a deferral is beneficial in this case. A mistake was made and owned up to, and a month or two is not going to serve a purpose in this case.

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

Mr. Recupito asked Ms. Murr if she had any further comments from the Building Department. Ms. Murr responded in the negative.

Mr. Recupito discussed in the past when a situation like this has occurred in Lakeside, there was some sort of remedy for this and asked Mr. Deutmeyer if the Building Department was given time to come up

with the figure. Mr. Deutmeyer responded he is not familiar with the Lakeside incident. Discussion ensued about the remedy that occurred in Lakeside regarding the fee and who did the calculation for the fine.

Mr. Recupito discussed the Board is discussing some valid points and appreciates the dialogue on how to prevent an issue like this in the future. He understands it is an honest mistake and that a foundation check would have occurred, even if it is not required. He thinks to keep things fair across the board he agrees with Council on having some kind of fee levied and deferring it for another month.

Mr. Kiepura asked the Petitioner who brought it to their attention, was it the Town or did they discover it. Mr. Rettig responded his craftsman and his office brought it to his attention, and he notified his client and the Town immediately.

Mr. Kiepura commented with being upfront about the situation, he thinks a fine would be inappropriate in his opinion and the petition not be deferred.

Mr. Recupito asked what the average lot coverage is for the houses they are building. Mr. Rettig stated he was not aware of the lot coverage that was agreed to in the PUD agreement, but they typically do in the 25 to 30 percent lot coverage.

Mr. Wilkening asked Ms. Murr or Mr. Deutmeyer if either of them know the formula used in the Lakeside situation. Ms. Murr and Mr. Deutmeyer responded in the negative. Mr. Wilkening stated he was just wondering about if for the motion it could be included to have a fine determined by the Building Department.

Mr. Recupito asked Mr. Deutmeyer if what Mr. Wilkening suggested would be feasible. Mr. Deutmeyer responded in the affirmative, as long as the Building Department has a calculation in their records and their motion is to utilize the same calculations.

Mr. Recupito entertained a motion for this item. A motion was made by Mr. Wilkening and seconded by Mr. Jackson to approve the Developmental Variance to allow the Petitioner to have a 27.7-foot front yard setback in a PUD Zoning District with the Finding of Facts and a fine to levied based off of the Building Departments previous formula used for the Lakeside Development. The motion passed 4-Ayes to 1-Nays by roll-call vote:

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

Mr. Eberly asked Mr. Recupito if there could be some direction given for who the fine would be levied against. Mr. Recupito responded the fine should go to the Developer.

2. Preda – Developmental Variance

Petitioner: Michael Preda

Vicinity: 10205 West 128th Lane, Cedar Lake, IN 46303

Mr. Recupito stated the next item of business was for the Developmental Variance request from Petitioner Mr. Michael Preda in the Vicinity of 10205 West 128th Lane. Mr. Recupito stated the Petitioner is

requesting a Developmental Variance to allow the Petitioner to build a 6-foot privacy fence in a front yard of a through lot adjacent to 129th Avenue. Mr. Recupito asked Mr. Deutmeyer if the legals are in order. Mr. Deutmeyer responded in the affirmative.

Mr. Recupito asked Mr. Preda the reason for his request. Mr. Preda stated he wants to put a 6-foot privacy fence in the back yard. According to the Town, he has 2 front yards, and he does not consider that his front yard and discussed his neighbors had the same style fence.

Mr. Recupito asked Ms. Murr if she had any comments from the Building Department. Ms. Murr commented this similar to the other properties adjacent to him that have gone for variances. They are on a through lot that backs up to 129th Avenue and are similar to Lynns way. Mr. Recupito asked if he was staying consistent with his neighbors. Ms. Murr responded in the affirmative. Discussion ensued this is a petition that has been done a multitude of time and the Plan Commission is working on updating the definition of a front yard.

Mr. Recupito asked the Board if they had any further comments. None were had.

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

Mr. Recupito asked Ms. Murr if there were any easements to be concerned with. 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. Jackson to approve the Developmental Variance to allow the Petitioner to build a 6-foot privacy fence in the front yard of a through lot adjacent to 129th Avenue, the fence to be consistent with the existing fence line of the neighbors and with the Finding of Facts. The motion passed unanimously by roll-call vote:

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

3. Electric Power Solutions LLC – Variance of Use & Developmental Variance
Owner: John & Darlene Boersma
Petitioner: Jeff Wiers
Vicinity: 12828 Wicker Avenue, Cedar Lake, IN 46303

Mr. Recupito stated the next item of business was for a Variance of Use and a Developmental Variance request from Petitioner Mr. Jeff Wiers in the vicinity of 12828 Wicker Avenue. Mr. Recupito stated the Petitioner is requesting two variances. The first is a Variance of Use to allow the Petitioner to have 2 principal structures on a lot in a B-3 Zoning District with multiple tenants in each building. The second is a Developmental Variance to allow the Petitioner to utilize the natural buffer as screening to adjacent residential zoning, to allow parking in the front yard and side yard, to allow 1 monument sign in the front yard, and signage per tenant not to exceed 32 square feet each. Mr. Recupito asked Mr. Deutmeyer if the legals were in order. Mr. Deutmeyer responded in the affirmative.

Mr. Jeff Wiers and Mr. Russ Pozen, DVG Team, were present as Petitioners for this item.

Mr. Wiers stated they have been to the Plan Commission and they have come to the BZA for these variances for their conceptual plans so they may have 2 buildings on one lot with multiple tenants. They would like to utilize the natural buffer that exists, to have parking in the front, and signage to exceed the maximum.

Mr. Recupito asked Ms. Murr if she had anything from the Building Department. Ms. Murr commented on the same as the Petitioner.

Mr. Recupito asked where this item was at with the Plan Commission. Ms. Murr responded they are at Preliminary Plat and Site Plan. Mr. Wilkening stated there is some question about the parking to the west from the Town Engineer. Which are the parking spaces to the west and the dumpster may impede the south to north flow of water. This property was rezoned B3 based on Mr. Wiers business.

Mr. Recupito asked Ms. Murr if there had been any correspondence from Mr. Oliphant regarding this item. Ms. Murr responded in the negative because any correspondence from Mr. Oliphant would go to the Plan Commission.

Mr. Kiepura stated he believes a comment was made that the parking spaces they have exceed the amount required. If he were to lose a couple on the west side it would not be an issue

Mr. Pozen stated as far as engineering, the question was can the offsite flow make the turn into the pond easily. The discussion with him is it can because it is only about 22 CFS. The defined swale that is being created would force that water into the pond easily. The discussion Mr. Oliphant and DVG Team's engineer are having is what other scope should be added.

Mr. Kiepura asked what is the buffer that is existing there currently. Mr. Wiers responded the entire rear corner is heavy forest right now. There is a small natural indenture back there. They are asking to use that as the buffer and not have to deforest any of this.

Mr. Kiepura asked where the residential area is by this property. Mr. Wiers indicated on the drawing provided to the Board where the residential lots are and discussed the other properties around the parcel.

Mr. Recupito asked if they were to follow the Zoning Ordinance what type of buffer would they have to have, if it is a fence or arborvitaes. Ms. Murr stated it could be a mixture.

Mr. Recupito asked what the property was zoned as before the rezoning. Mr. Wiers stated it was originally residential property and there is actually still a 2-car garage and an old pole barn on the property. Ms. Murr stated it was originally R2 before being rezoned B1 by the Plan Commission last October, before being rezoned to B3.

Mr. Recupito asked if their business plan has changed from when they started the process. Mr. Wiers responded in the negative and stated as Mr. Eberly had noted at the Plan Commission the previous week, their intention and discussions with Mr. Eberly and Ms. Murr from the beginning were this design. This had not come up previously at the Plan Commission and he had not indulged this information during the rezoning process. Mr. Wiers discussed aside from whatever engineering discussions are had he did not foresee anything changing with the plan he is presenting to the BZA.

Mr. Pozen advised Mr. Wiers to discuss the reasoning for the parking and the style of business he is wanting to put in. Mr. Wiers stated what they are going through is their business is not going to use the whole square footage of the first building they are wanting to build, and build the second building later on. They would only use approximately one third or one quarter of the space of the first building. They plan to have other tenants of a similar business-style and do not intend to have restaurants or retail shops in the buildings. The plan is to have warehouse spaces for other contractors and to minimize the usage to just the tenants of the building.

Mr. Pozen discussed with contractors the employee would come to the office and leave their vehicles. Mr. Wiers commented on the same and used the example of his employees for his business. Mr. Wiers explained where the amount of parking comes from is based off of employees leaving their vehicles behind and taking a company vehicle for work.

Mr. Recupito asked Mr. Deutmeyer if a B3 Zoning allows the owner to use the property in any fashion that B3 allows, as well as B2 and B1. Mr. Deutmeyer responded in the affirmative. Mr. Recupito commented the Town does not have business licenses and asked Mr. Deutmeyer if a B3 property owner would want to put in a business that fits Town Ordinances, they can just put the business in. Mr. Deutmeyer responded in the affirmative and stated as long as they follow the Town Ordinances.

Mr. Recupito asked the Petitioner for the approximate number of tenants they are wanting for each building. Mr. Wiers responded they are looking at 10 tenants total, with 5 for each building, so there can be 2,000 square foot units.

Mr. Recupito confirmed the Petitioner is talking about having 10 tenants in total. Mr. Wiers responded in the affirmative. Mr. Recupito stated his problem is if they are given approval for 10 businesses, even though the Petitioner is discussing not wanting retail or restaurants, without a contract drafted up preventing them from having those businesses, the Petitioner could still rent out units to a retailer or restaurant. Mr. Recupito asked Mr. Deutmeyer if that was a correct statement. Mr. Deutmeyer responded in the affirmative.

Mr. Recupito advised the Petitioner he was making this point to protect the interest of the Town and limit congestion in the area. Mr. Wiers stated they are okay with having a contingency restricting them to no retail or restaurant use.

Mr. Bunge asked the Petitioner for his business does he require a B3 Zoning. Mr. Pozen responded contractors and construction offices is listed in the B3 Zoning Ordinance. Mr. Bunge asked the Petitioner about various businesses that would be in the buildings, such as welding, manufacturing, or car repair. Mr. Wiers responded in the negative and stated they would potentially be open to having tenants of that nature, like a small welding shop.

Mr. Wilkening asked if the original proposal to the B3 only showed one building. Mr. Wiers responded in the negative.

Mr. Wilkening stated Mr. Oliphant had asked him at the last Plan Commission meeting how many tenants the Petitioner had wanted and the response had been 6. Mr. Wilkening commented the Petitioner is now discussing 10 businesses in the buildings. Mr. Wilkening expressed concerns about the change in the number of businesses being proposed, for potential retail areas the tenants may have, and the traffic for the area.

Mr. Wiers agreed with Mr. Wilkening that originally, he did state they were considering a maximum of 3 tenants per buildings. He met with other contractors that have similar set ups with 5 2,000 square foot units, which is why he was looking at that many tenants per building. Mr. Wiers disagreed with Mr. Wilkening on contractors having public space or retail area and stated he does not have any individuals come to his place of business. They are wanting to have a small office and large warehouse space.

Mr. Wilkening responded he understands what the Petitioner is wanting to use it for, but there is no language provided to the BZA stating any of that. Mr. Recupito commented on the same and asked Ms. Murr where the number for parking space count comes from. Ms. Murr responded it comes from the size of the building and the use of the buildings.

Mr. Wiers stated everything being discussed were items they had discussed with Ms. Murr and that Ms. Murr helped them formulate their plan so they could be within the Town Code. Mr. Wiers discussed at length his desire for the amount of parking and his intent for the property.

Mr. Recupito expressed his concerns for the parking spaces of the proposed business and the potential for a B3 Zoning to have businesses with a higher customer value being a tenant. Ms. Murr commented they would not be able to get use or occupancy due to needing a variance for the parking and explained the different parking uses. Discussion ensued about the use of the property and what the Petitioner is wanting to do.

Mr. Kiepura asked the Petitioner how much space of the property were they going to use. Mr. Wiers stated they wanted to use between a quarter and a third of one of the buildings and that he wants to bring his business to Cedar Lake. Mr. Kiepura commented based on the amount of space the Petitioner would want to use for one of the buildings, he would be limited on how many tenants he could have.

Mr. Kiepura stated he agrees with Ms. Murr if the Petitioner puts in an item that requires more parking than what is available, they would need to come to the BZA for a variance. If this item is approved, whoever makes the motion would include no restaurant or retail, which the Petitioner stated he is fine with and commented on the 2,000 square footage being large enough for a contractor for warehouse space. Mr. Wiers commented on the same regarding the square footage and discussed conversations he had with similar contractors who had spaces like he is proposing.

Mr. Bunge asked what if his request was modified to be a Commercial PUD and a lot of the restraints and restrictions being discussed can be put into a PUD agreement. Mr. Recupito commented there probably was not enough acreage for a PUD. Ms. Murr stated the current Ordinance requirement for a PUD is a minimum of 10 acres and advised the BZA can allow a variance to allow for a PUD with less than 10 acres.

Mr. Wilkening asked Ms. Murr when the registered mail had been sent out. Ms. Murr responded they were mailed on October 26. Mr. Wilkening asked when they received their Plan Commission approval for rezoning, if it was October 18. Ms. Abernathy advised the Board the rezone was approved August 18.

Mr. Recupito asked if there was any public comment for or against this variance. There was none. Mr. Recupito closed the public portion for this item.

Mr. Recupito asked Ms. Murr if she had any further comments. Ms. Murr advised the Board the representatives of DVG Team have been in with Mr. Wiers and have met with Mr. Eberly and herself. Their last meeting involved Mr. Kubiak and discussed what has been reviewed with the Petitioner.

Mr. Recupito advised the Petitioner when they generally receive this form of request, there is an idea of what style of businesses there are going to be to assist in determining if the request is viable. Mr. Wiers asked if this would be a request from the Board, and he had not received this information prior. Mr. Recupito responded he cannot speak on what has occurred with other individuals, but they consistently request an idea of what style of business is going to be incorporated. The biggest issue he has would be the open-ended aspect of the proposal.

Mr. Wilkening commented on the same and stated what is being spoken tonight is not what was proposed at their Concept Plan, and the turnaround time from Plan Commission approval to BZA application is quick. It appears that this petition appeared in front of the BZA almost immediately following their B3 approval. Mr. Eberly stated the Petitioner knew they were going to be seeking these variances prior to requesting the rezoning. Further discussion ensued about the amount of parking required and if the zoning would need to be an M1 based on the businesses of the potential tenants. Discussion also ensued about a B1 or B2 business meeting the parking requirement can rent from the Petitioner and this being allowed per the Zoning Ordinance.

Mr. Recupito asked the Petitioner if for the signage, they were wanting a monument sign and a sign on the building for each tenant. Mr. Wiers responded in the affirmative. Mr. Recupito asked if the monument sign was going to be broken down with all of the tenants or just the name of the complex. Mr. Wiers responded they would have spaces for the tenant's businesses on the monument sign. Ms. Murr stated they meet Town Ordinance for the monument sign, the variance is for it to be in the front yard, and the signage on the building is also a variance request.

Mr. Wilkening asked if the businesses were going to have a sign on the monument sign, and there was going to be no retail space, why does each business need a sign over the door. Ms. Murr stated it would be similar to other business plazas in town that have their business displayed over the door. Discussion ensued on why the businesses would need a sign over the door.

Mr. Kiepura asked the Petitioner if the screening would be sufficient for the residents, and if it is not sufficient would they be willing to put up a fence or extra trees to make it the proper screening. Mr. Wiers responded that would be fair. Mr. Kiepura commented on making the screening be contingent on if it meets the requirements by Ordinance and if it is not, they would need to meet Ordinance. Discussion ensued on what screening is required by Town Ordinance and that the existing woodland area is dense material.

Mr. Wilkening asked who would ensure that the screening stays sufficient. Mr. Wiers commented that vegetation typically regrows by itself. Mr. Wilkening stated it is the Petitioner's responsibility to maintain the screening.

Mr. Recupito clarified what Mr. Wilkening was discussing is there is not a quantity with the Petitioner's request. What Ms. Murr discussed is there is a 50 percent screening. Discussion ensued at length about the policing of using the natural buffer as a screening.

Mr. Wilkening commented there was a lot of uncertainty and questions with this petition and suggested deferring this item.

Mr. Pozen asked why the number of businesses are an issue if parking and items of the like are based off of the total building. Mr. Wilkening responded what he has heard from the Petitioner has changed in the past 2 weeks and there is not a whole lot of information provided.

Mr. Wiers stated they are here to discuss any part of their plan and his changing the number of businesses is him discussing with other businesses his plan and being advised he would have difficulty selling the original unit size. They are fine with restricting their business from having retail or restaurants.

Mr. Wilkening asked Mr. Eberly if a welding shop is B3. Mr. Eberly responded he did not have the Zoning Ordinance available to state either way and stated the BZA has every right to limit or deny their request for multiple tenants. He is not suggesting it be open ended. The Petitioner needs to ask the BZA for a specific number of tenants in those two buildings are not to exceed. He is not advocating to leave it open-ended.

Mr. Wilkening stated what Mr. Eberly discussed is what he was talking about. What is in front of them does not have any specific numbers. Mr. Eberly advised it is within the BZA's right to demand to have the Petitioner ask for the specific number of businesses for each building. Mr. Deutmeyer responded he is not certain if that resolves the issue. If the BZA wants to ensure this project is fitting for the area, an analysis of the uses needs to be conducted.

Mr. Wiers stated a sheet-metal fabricating shop is listed on the B3 Zoning and the only thing excluded is manufacturing. They are not looking to have a manufacturing business. Mr. Wilkening stated the Petitioner has not proposed a certain number of businesses.

Mr. Recupito advised the Petitioner to defer this item. The Petitioner is now aware of the Board's concerns and what they are expecting. This is not something to be rushed. Mr. Wiers stated they are coming to the BZA with these things laid out and willing to make the change in writing to state what they are willing to exclude. Mr. Recupito stated his suggestion is that they come back next month with those details. Mr. Wiers discussed they had a contractual obligation to close on the property and they are trying to ensure they are able to use the property how they want before purchase.

Mr. Bunge asked the Petitioner if the deadline was in the next 30 days. Mr. Wiers responded in the affirmative.

Mr. Deutmeyer advised the Board the contractual deadline is not their problem. Mr. Recupito stated the Petitioner has an obligation and the Board has an obligation to do what is right for the Town.

Mr. Wilkening stated that he is a fan of the Petitioner not wanting any retail, but the Petitioner has to bring the actual plan and details to the Board. He wants for the Petitioner to be able to do what he is proposing, but the open-ended portion is causing so many variables.

Mr. Wiers asked Mr. Pozen if he understood what it was the Board is wanting them to answer. Mr. Pozen responded they are requesting for a number of uses and a few other items. Mr. Wiers stated he is comfortable doing that tonight. They are looking at no more than 5 per building and they are looking for these uses and are willing to remove the items that has been discussed.

Mr. Pozen requested some time to discuss this item with his client. Mr. Recupito agreed to the request.

Mr. Recupito tabled this item to allow the Petitioners some time for discussion.

4. Lordo – Developmental Variance

Petitioner: Jacob Lordo

Vicinity: 13503 Dewey Street, Cedar Lake, IN 46303

Mr. Recupito stated the next item of business was for a Developmental Variance request from Petitioner Mr. Jacob Lordo. Mr. Recupito stated the Petitioner is requesting a Developmental Variance to allow the Petitioner to build a 483 square foot garage with side yard setbacks of 2 feet and a front yard setback of 10 feet from Lee Street and 10 Feet from Dewey Street on a through lot with no primary structure with lot coverage over 25 percent. Mr. Recupito asked Mr. Deutmeyer if the legals were in order. Mr. Deutmeyer responded in the affirmative.

Mr. Recupito asked the Petitioner to explain his request. Mr. Lordo responded he is asking for an extension to a previously approved variance to erect a garage on the property in the size manner discussed, except the setback to the rear will be 40 feet from Dewey Street.

Mr. Recupito asked if that was a typo on the request. Mr. Lordo responded not this time. Mr. Recupito asked Ms. Murr if it was advertised as 10 feet. Ms. Murr responded the 10 feet was how it originally requested. Mr. Recupito asked if he was requesting 40 feet now. Mr. Lordo discussed either way 40 feet or 10 feet, it is in line with Town Ordinance

Mr. Recupito asked Ms. Murr if she had anything. Ms. Murr responded previously there was a variance in front of them to put a garage in, that was more of a carport. It was approved to allow him to put in a structure. The Petitioner put in a 200 square foot shed on the property and he is back requesting to put up a 22 by 20-foot garage with the 10-foot setback off of Dewey and 40-foot setback off of Lee Street, 2.25-foot setback on each side yard. Originally, it was hoped he could combine his parcels, because he lives across the street. However, this was not able to happen due to the street.

Mr. Recupito asked the Petitioner if the shed being removed. Mr. Lordo responded in the negative and discussed what had occurred when he previously appeared in front of the BZA.

Mr. Recupito commented there will be 2 accessory structures on the property if the garage is approved and asked if that was another variance request. Ms. Murr responded the Ordinance allows for 2 accessory structures on a property but not without a primary structure, so part of his request is to have accessory structures without a primary.

Mr. Lordo started part of the hardship is the lot is 26.5 feet wide by 70 feet long. Mr. Recupito asked if there was a reason for the 10-foot front yard setback. Mr. Lordo stated he believed that was the Ordinance code. Ms. Murr responded that was correct.

Mr. Lordo asked Mr. Recupito if what he was talking about was why the building was not further back. Mr. Recupito responded in the affirmative. Mr. Lordo responded it was placed there to allow 10 feet between the garage and the shed. Ms. Murr commented the placement allows for the 10 feet of separation between the buildings.

Ms. Murr commented the lot coverage that is proposed with the 20 by 22-foot garage is 34.5 percent.

Mr. Recupito asked the Board if they had any comments for the Petitioner. Mr. Wilkening asked if he had wanted to put up a metal building. Mr. Lordo responded the original plan he had was to put up a carport.

Mr. Wilkening asked if he resides there or owns the place. Mr. Lordo responded he resides there as his primary residence.

Mr. Recupito asked if there were any public comment for or against this variance. Mr. Darrin Bowman stated he owns the property next to him and wanted clarification to the position of the garage. If the garage is 10 feet off of Dewey Street, it blocks his view down the road and asks is there any way he could turn his shed and move the garage back further. He is not opposed to the garage itself, but the location of the garage would block his view of the lake and lower his property value.

Mr. Wilkening asked the distance between Mr. Bowman's house and the proposed garage. Ms. Murr responded approximately 47 feet. Mr. Wilkening commented the vision triangle Mr. Bowman is discussing is not a safety triangle.

The Board asked Mr. Bowman if he has lake rights with Cedar Point. Mr. Bowman responded in the affirmative.

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

Mr. Lordo requested the record show the property Mr. Bowman is referring to is not his residence. The property is in disrepair and the Town says no one can live in the property.

Mr. Recupito stated earlier hardships were discussed with a different Petitioner, and asked Mr. Deutmeyer if the request of the Petitioner is fitting the bill of a self-induced hardship.

Mr. Deutmeyer asked what the current lot coverage is. Mr. Recupito commented without the shed, he does not know, but with the shed the lot coverage is 34.5 percent. Mr. Deutmeyer asked if there was nothing else on the lot besides the shed. Ms. Murr responded in the negative and stated the primary residence is across the street. Mr. Deutmeyer commented what Mr. Recupito was asking is correct.

Mr. Recupito asked Mr. Lordo if he understood what was discussed. Mr. Lordo responded in the negative. Mr. Recupito asked Mr. Deutmeyer to explain a self-induced hardship.

Mr. Deutmeyer discussed what a hardship is and the Petitioner put a shed up but he is limited to a 25 percent lot coverage and is now requesting a variance to exceed that 25 percent. The hardship for the Petitioner's variance was created with the addition of the shed.

Mr. Lordo stated the hardship that existed prior to the shed is the lot his primary structure sits on is geographically unable to support a garage due to the slope of the land. He purchased the property across the street with the intention of placing a garage on it and the size of the lot cannot support a lot. There is no other potential use.

Mr. Recupito stated one of his requests, is a lot coverage request, which is self-inflicted. Mr. Wilkening asked if the shed was gone and just the garage placed on, what would the lot coverage be. Ms. Murr responded 23.7 percent.

Mr. Recupito asked the Petitioner when he got the previous variance, was the shed already existing. Ms. Murr responded in the negative and the original variance was to allow him to put up an accessory structure.

Mr. Deutmeyer asked when he received the previous variance was the shed already existing. Ms. Murr responded in the negative and stated the original variance was to allow the Petitioner put up an accessory structure. There had been discussion during that meeting if there was a time, he would want to put up a garage in the future, he could move or remove the shed to put up a garage. The Petitioner had to come back in front of the BZA due to the variance expiring.

Mr. Deutmeyer asked if the shed was moveable. Mr. Lordo responded it is still in use and the garage is to fulfill a need to secure his vehicles. He uses the shed for lake toys, tools, and things of that nature. He has no other potential way to secure those items on his primary residential lot.

Mr. Recupito stated part of the original request was not including two structures on that property. Mr. Lordo commented that was correct and tonight he is requesting put a garage up and keep the shed.

Mr. Wilkening stated they were back to the Federal law because it is a self-inflicted hardship with the lot coverage. Mr. Recupito asked Mr. Deutmeyer for some direction on this item and if it is advisable to approve this when it is a self-inflicted.

Mr. Deutmeyer stated it is within the BZA's discretion and if they elect to go the approval route, there are distinguishing characteristics of this cases versus some other cases. Such as this was originally approved last year and the difficulties the Petitioner has explained with the primary parcel that contains his residence. These could be the types of criteria additional findings of hardship that are something other than self-inflicted.

Mr. Recupito asked Mr. Lordo if he would be opposed to turning the shed and moving the garage back off the road a little bit. Mr. Lordo asked the Board where would they like him to move the shed to and explained he set up the design on the survey was the easiest to fit with current Ordinances. Discussion ensued about the current spacing between the shed and the garage and where to potentially move the garage to.

Mr. Recupito asked if the current side yard setback of the shed is 2.25 feet and the garage is proposed to be in line with the setback of the shed. Mr. Lordo responded in the affirmative. Mr. Recupito asked Ms. Murr if the setback was measured at the eaves. Ms. Murr responded setbacks are measured from the foundation. Discussion ensued about the soffit and gutters and the allowed overhang being dependent on the roof.

Mr. Kiepura asked the Petitioner what style of roof he was planning to put on the garage. Mr. Lordo responded the garage was going to be a hip roof.

Mr. Wilkening commented the plans presented are not exactly square and asked the Petitioner if he is confident in his property lines. Mr. Lordo responded the drawing presented to the Board was based off of the math of the original survey.

Mr. Recupito commented he would like to see the garage pushed back and asked the Petitioner if the garage is pushed back would he have enough room to get in and out of the shed. Mr. Lordo stated he thinks the 6-foot option is reasonable. If they put the proposed structure back 4 feet, it allows his neighbor to be more comfortable.

Mr. Wilkening asked if the shed doors are located on one of the short ends. Mr. Lordo responded in the affirmative and stated to doors face Dewey Street and are maybe 2.5 to 3 feet wide.

Mr. Jackson asked the Petitioner if the shed is on a pad. Mr. Lordo responded it is on an asphalt pad and stated he would like for the Board to consider the hardship of the lot not being able to be utilized for anything else due to its size.

Mr. Wilkening asked if the property to the north of the Petitioners is a two-car garage. Mr. Lordo responded in the affirmative. Discussion ensued regarding the primary structures in this neighborhood are across the street from the accessory structures and the size and setbacks of the two-car garage north of the Petitioner's property.

Mr. Wilkening asked Ms. Murr if she would determine what waivers the Petitioner would need from the Plan Commission. Ms. Murr commented she would if the Petitioner would need them. The waivers would depend upon the Building Commissioner's review of the application. Mr. Recupito asked if this had to go to the Plan Commission. Ms. Murr responded it may. Mr. Wilkening commented on the same due to the overhang issues.

Mr. Jackson asked the Petitioner if he needed the 22-foot width for the garage. Mr. Lordo responded he is wanting to get two cars and a motorcycle inside and he would like to have a 22 by 20-foot garage.

Mr. Recupito stated he is okay with the garage, but the shed is holding it up. He would like to see it consistent with his neighbor's garage, but what the Petitioner requested is what is in front of them. Mr. Wilkening commented Mr. Recupito is correct, the Petitioner has not officially changed anything and they have talked about a 10-foot or greater than front yard setback. Mr. Lordo stated he did not believe the 10-foot setback was a variance because it is aligned with code.

Mr. Recupito asked Ms. Murr for clarification on why the 10-foot setback is not a variance. Ms. Murr stated the Ordinance allows for accessory structures to have different setbacks.

Mr. Wilkening commented he thought it was discussed moving the garage closer to the shed. Mr. Lordo stated to appease the Board to get approval, he has no problem with that. Discussion ensued regarding moving the garage back, the setbacks allowed by Town Ordinance, and the variances the Petitioner would need.

Mr. Eberly advised the Board if they are going to require the Petitioner to decrease the distance between the garage and the shed, that would be a different variance request not advertised for and asked Mr. Deutmeyer if that was correct. Mr. Deutmeyer responded in the affirmative.

Mr. Recupito discussed turning the shed 90 degrees to the north to gain 20 feet between the garage and the shed. The Petitioner would then be able to move his garage 10 feet back and get 20 feet of parking in front of the garage. Mr. Lordo indicated he be happy to oblige with the Board's recommendation.

Mr. Kiepora asked Mr. Deutmeyer if the Petitioner would need to amend his request. Mr. Deutmeyer stated if the Petitioner willing to make these representations now, the Board can make a motion based upon the representations and incorporate those in.

Mr. Recupito entertained a motion for this item. A motion was made by Mr. Wilkening and seconded by Mr. Jackson to approve the Developmental Variance to allow the Petitioner to build a 440 square foot garage with side yard setbacks of 2 feet and front yard setback of 10 feet from Lee Street and 20 feet from Dewey Street on a through lot with no primary structure with lot coverage at 34.5 percent with the Finding of Facts. The motion passed unanimously by roll-call vote:

Board of Zoning Appeals

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

3. Electric Power Solutions LLC – Variance of Use & Developmental Variance (Continued)

Owner: John & Darlene Boersma

Petitioner: Jeff Wiers

Vicinity: 12828 Wicker Avenue, Cedar Lake, IN 46303

Mr. Recupito stated the next item was to resume the petition for the property located in the vicinity of 12828 Wicker Avenue for a Variance of Use and a Developmental Variance.

Mr. Wiers asked for a motion to defer this item. Mr. Pozen stated his understanding of the items that need to be more specifically clarified are the number of units, better clarification on the screening, and work to exclude specific businesses that are allowed in the B3 Zoning Ordinance and asked if this is a good summation of what the Board is wanting further clarification on. Mr. Wilkening responded in the affirmative and discussed the scenario they are wanting to avoid.

Mr. Pozen advised the Board they are confident they have enough parking and can define their idea appropriately to satisfy the Board. Mr. Wilkening commented the reduction of retail is a benefit to the property.

Mr. Wiers stated their purpose for having the larger buildings is to facilitate the indoor parking of service vehicles overnight, and this would alleviate some of the issues they are considering.

Mr. Jackson asked Mr. Wiers if they were renting or selling the units. Mr. Wiers responded they are going to be the sole owners of the property and lease to another contractor. Mr. Jackson clarified to the Petitioner why some of the concerns for the property are being discussed. Mr. Wiers stated he understood and discussed the change in the number of units from the Plan Commission meeting. Mr. Pozen stated they were requesting the deferral to get more definition to submit to the Board.

Mr. Recupito entertained a motion for the Variance of Use. A motion was made by Mr. Wilkening and Mr. Bunge to defer this item to the December 9, 2021, meeting. The motion passed unanimously by roll-call vote:

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

Mr. Recupito entertained a motion for the Developmental Variance. A motion was made by Mr. Wilkening and Mr. Bunge to defer this item to the December 9, 2021, meeting. The motion passed unanimously by roll-call vote:

Mr. Jackson	Aye
Mr. Wilkening	Aye

Mr. Kiepura Aye

Mr. Bunge Aye

Mr. Recupito Aye

6. Resolution No. 2021 -01 – Board of Zoning Appeals Rules and Regulations

Mr. Recupito advised that the next order of business was for Resolution Number 2021-01 the Board of Zoning Appeals Rules and Regulations. Ms. Murr stated the Rules and Regulations were updated based off the conversation from the last meeting. The section on the Board members being able to remonstrate on an item has been updated by Mr. Eberly. Ms. Murr provided the Board with a checklist of items illustrating what she would do and what the Petitioner would do, per the Boards request. She has not received any comment from Mr. Austgen regarding this item prior to this meeting.

Mr. Deutmeyer stated he talked with Mr. Austgen regarding this item. Mr. Austgen advised him, he needs more discussion with both the Plan Commission and the BZA regarding the Rules and Regulations due to both bodies looking to adopt similar Rules and Regulations.

Mr. Recupito asked if this is something that could be prepared by the December meeting. Mr. Deutmeyer responded in the affirmative.

Mr. Wilkening asked Ms. Murr if the checklist provided is in the relative order in which the items currently occur. Ms. Murr responded in the affirmative and discussed at length the various steps listed in the checklist provided to the Board.

Mr. Wilkening asked Ms. Murr if there was anything that she was not comfortable with in the checklist that she provided to the Board. Ms. Murr responded in the negative and stated just because a Petitioner submits pictures with their application does not mean she would provide them to the Board. If the Petitioner provides pictures with the application, it allows for the her to understand the Petitioner's request.

Mr. Recupito asked if someone would be going out and photographing the properties. Ms. Murr responded she could. Mr. Recupito discussed preferring a Town employee obtaining pictures of the Petitioner's property for their packets. Ms. Murr discussed the fence approved on Lynns way where the Petitioner provided a picture from her second floor of the backyard and that Ms. Murr verified it was the Petitioner's property before including the picture.

Mr. Wilkening asked if Ms. Murr is comfortable with the items that would be the Petitioner's responsibilities. Ms. Murr responded in the affirmative.

Mr. Recupito entertained a motion for this item. A motion was made by Mr. Bunge and seconded by Mr. Wilkening to defer this item to the December 9, 2021, meeting. The motion passed unanimously by roll-call vote:

Mr. Jackson Aye

Mr. Wilkening Aye

Mr. Kiepura Aye

Mr. Bunge Aye

Mr. Recupito Aye

Update Items:

1. 2018-2021 BZA Actions Follow-Up Report

Mr. Recupito stated the next order of business was for the follow-up report of BZA Action items from 2018 to present. Mr. Eberly advised the Board he sent all of them an electronic copy of the Follow-Up reports via e-mail. Ms. Murr commented she provided the Board hard copies of the report for the meeting.

Mr. Eberly noted one of the signs listed on the report was changing messages to quickly and he had contacted the owner of the property to correct it. Most of what is provided in the report has been compliant, there are a couple of businesses that have been cited for noncompliance. He checked on the ones Mr. Recupito requested information about. Both variances had expired and the proper parties notified they would need to come back in front of the BZA if they want to conduct any work on the property. Mr. Eberly highlighted items with never applied for their Building Permits.

Mr. Wilkening asked Mr. Eberly if when making a motion, if there is a specific or legal phrase to include the discussion with the Petitioners, like with the Finding of Facts. Mr. Eberly responded with the Finding of Facts and any conditions specifically noted as part of the approval are what are enforceable, not just the general conversation. In the process of making the motion, reference the Finding of Facts and pointing out the conditions. The conditions should be listed in the motion.

Ms. Murr stated with the Finding of Facts there is actually a form that can be used to put the conditions into and advised the Board the Finding of Facts form is what is used for their approval. Mr. Eberly commented on the same and discussed distributing the form to the Board members so they can reference the Finding of Facts when making their motion and include the conditions for the approval of the variance on the form.

Mr. Eberly advised the Board in order for a Petitioner to be successful in obtaining approval, they have to make the finding that they meet all three criteria for a Developmental Variance or all five for a Variance of Use, and if they do not meet any one of the criteria for their variance it would need to be denied. Mr. Deutmeyer commented what Mr. Eberly was saying is correct.

Mr. Wilkening asked Mr. Eberly if Use Variance is the new phrase for Special Use Variance. Mr. Eberly responded in the negative and stated a Use Variance is not a Special Use or Special Exception, and there are distinct difference in the state law. Mr. Eberly discussed that Mr. Austgen and himself want to have a training meeting with the Plan Commission and the BZA to discuss the terminology.

Mr. Recupito thanked Mr. Eberly and asked if the Board had any further discussion. None were had.

PUBLIC COMMENT:

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

ADJOURNMENT:

Mr. Recupito adjourned the meeting at 10:25 PM.

TOWN OF CEDAR LAKE BOARD OF ZONING APPEALS

Nick Recupito, Chairman

Jeff Bunge, Vice Chairman

John Kiepora, Member

Jerry Wilkening, Member

Ray Jackson, Member

ATTEST:

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: November 10, 2021 Minutes