



CEDAR LAKE BOARD OF ZONING APPEALS MINUTES
CEDAR LAKE TOWN HALL, 7408 CONSTITUTION AVENUE, CEDAR LAKE,
INDIANA
September 8, 2022 at 6:00 pm

Call To Order:

Mr. Recupito called the Board of Zoning Appeals meeting to order at 6:00 pm, on Thursday, September 8, 2022, with its members attending on-site. The Pledge of Allegiance was recited by all.

Roll Call:

Members Present Via Zoom: None. **Members Present:** Ray Jackson; Jerry Wilkening; John Kiepura; Jeff Bunge, Vice Chairman; and Nick Recupito, Chairman. A quorum was obtained. **Also Present:** David Austgen, Town Attorney; Chris Salatas, Town Manager; and Ashley Abernathy, Recording Secretary. **Absent:** None.

Approval Of Minutes:

Mr. Recupito entertained a motion for the Minutes of the August 11, 2022, Meeting; a motion was made by Mr. Kiepura and seconded by Mr. Jackson to approve the same. 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. 2022-28 Terry – 6712 West 145th Avenue – Developmental Variance

Owner/Petitioner: Brian and Candice Terry, 6712 West 145th Avenue, Cedar Lake, IN 46303

Vicinity: 6712 West 145th Avenue, Cedar Lake, IN 46303

Mr. Recupito advised the first order of Old Business was for a Developmental Variance to allow the Petitioner to have a 6-foot privacy fence in the front yard on a corner lot with a zero-foot setback from 145th and a zero-foot setback from Hobart by Petitioners Mr. Brian Terry and Ms. Candice Terry on a property located at 6712 West 145th Avenue. Mr. Austgen advised the legals are in order.

Ms. Terry stated they have created a different plan than what was presented the month prior, and asked if they could distribute them to the Board. Mr. Recupito responded in the affirmative. Ms. Terry distributed the plans to the Board.

Mr. Austgen asked with the distribution of new material, is the Petitioner presenting a new petition. Ms. Terry responded when they asked if they would need to make a new petition, they were advised they would not

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need to. Ms. Abernathy advised they had requested a deferral the month prior to make updates to their plans.

Ms. Terry advised instead of requesting the 0-foot setback off of 145th Avenue, they are requesting to move the fence back to around 24 feet to enclose the steps of their deck within the fence. Mr. Recupito asked if their proposed plan is for a 24-foot setback off of 145th Avenue while still requesting the 0-foot setback off of Hobart Street. Ms. Terry responded in the affirmative.

Mr. Recupito asked Ms. Abernathy what the setbacks were from the original approval. Ms. Abernathy responded it was for a 30-foot setback off of 145th Avenue and 0-foot setback off of Hobart Street.

Mr. Wilkening asked Ms. Terry to clarify what they have presented to the Board. Ms. Terry discussed how the steps to the deck are laid out and their intention is to come out from the corner of the steps around 3 to 4 feet and going parallel along 145th Avenue.

Mr. Salatas asked how the photograph provided is situated along the plat. Ms. Terry advised the photograph is taken from 145th Avenue.

Mr. Bunge asked if the survey included in their packet does not include the porch that is depicted in the photograph they provided to the Board. Ms. Terry responded in the affirmative and advised the survey had been provided to them by the previous homeowner. Mr. Bunge discussed the survey showing a 24-foot setback from the Right of Way to the front of the house without the deck. Discussion ensued.

Ms. Terry advised when they had someone come out to measure 30 feet, the 30-foot measurement was behind the steps. Mr. Recupito asked where they measured from. Ms. Terry responded from the road. Mr. Salatas advised if the measurement is not conducted from the Right of Way line, it is likely that land is being added that would be considered public land.

Ms. Abernathy advised the Board using the line measure tool on the Lake County GIS Website, it appears that from the distance from the edge of property to the edge pavement is approximately 13.5 feet. Mr. Bunge discussed the road being along the south side of the Right of Way and the appearance of the Petitioner having a larger front yard than the actual front yard size. Discussion ensued.

Mr. Recupito commented being okay with allowing the fence to go to the corner of the house. However, they do not know the exact setback of the corner of the house to the road. Mr. Kiepora discussed needing the setback from the Right of Way line to the corner of the house.

Mr. Recupito asked the Petitioner if they would be amenable to an approval for the fence to run from the corner of the house parallel to 145th. Ms. Terry responded in the affirmative. Discussion ensued.

Mr. Wilkening asked the home owner would be responsible for installing the vision triangle for Hobart Street if the 0-foot setback was approved. Mr. Salatas responded in the affirmative.

Mr. Recupito asked if there was any public comment for or against this item; seeing none, Mr. Recupito closed the Public Hearing for this petition.

Mr. Austgen commented the vision triangle is newer discussion within the Town. If they are going to consider including language for the vision triangle, it should be included within any motion.

A motion was made by Mr. Wilkening and seconded by Mr. Kiepora to approve a 6-foot privacy fence in the front yard of a corner lot with a setback to the corner of the house off of 145th Avenue and a 0-foot setback off of Hobart Street with the condition that if any modifications are made to Hobart Street or the Vision Triangle in the future, it is the responsibility of the property owner to make the necessary changes to the fence with the Findings of Fact. Motion passed unanimously by roll-call vote:

Mr. Jackson	Aye
Mr. Wilkening	Aye

Mr. Kiepura	Aye
Mr. Bunge	Aye
Mr. Recupito	Aye

New Business:

1. 2022-39 Cannon – 7519 Lake Shore Drive – Developmental Variance

Owner/Petitioner: Damatio Cannon, 7519 Lake Shore Drive, Cedar Lake, IN 46303

Vicinity: 7519 Lake Shore Drive, Cedar Lake, IN 46303

Mr. Recupito advised the first order of New Business was for a Developmental Variance to allow the Petitioner to construct an addition on the home with an overall height of 28 feet by Petitioner Mr. Damatio Cannon for a property located at 7519 Lake Shore Drive. Mr. Austgen advised the legals were in order.

Mr. Damatio and Ms. Samantha Cannon were present for this petition with their architect, Ms. Debbie Gaines, Ideal Homes.

Mr. Cannon stated they are going to be requesting a 3-foot increase in the height requirement to increase the height from 25 feet to 28 feet.

Mr. Salatas advised he believes Mr. Oliphant has reviewed this plan for storm water. If not, a contingency could be made to require Mr. Oliphant to review the storm water prior to issuance of permit.

Mr. Austgen requested clarification on the update to the request from the original request on the application. Ms. Abernathy advised when the petition was originally submitted, it was submitted under the assumption it was in an R-2 Zoning District. During the creation of the legal advertisement, it was determined this was a Legacy Lot. Due to this, the R-2 request was removed and changed to a height variance request.

Mr. Bunge asked if there is a square foot requirement in a Legacy Lot Zoning District. Mr. Salatas advised the Legacy Lot does have a square footage requirement. The Petitioners have already met this requirement.

Ms. Gaines stated they are requesting a height variance due to the current house being a single-story from the street with a walkout basement on the lakeside. Their proposal is for a one car garage addition with a full second floor to be built in the style of Modern Colorado Industrial. The house proposal was designed following the R-2 Zoning requirements, which allows for the height of the house to be 30 feet. They were then advised of the new height requirement of 25 feet. The renderings provided to the Board show the first gable meets the 25-foot requirement. However, the second gable that give the house the style is over the height requirement. The height and style of the proposed house are similar to adjacent properties.

Mr. Kiepura asked from where is the height being measured. Ms. Gaines responded it is from the top of the second roof line. Mr. Kiepura asked if the measurement was being done from the rear or front of the house. Ms. Gaines responded from the top of foundation on the street side.

Mr. Kiepura asked Mr. Salatas where the height is to be measured from. Mr. Salatas responded the height is measured off of street side from the top of foundation. Discussion ensued.

Mr. Kiepura asked if the raised section was going to be a solid wall. Ms. Gaines responded in the affirmative and discussed their intentions for that section of the house. Mr. Kiepura inquired if the reason for the request is for aesthetic reasons and if the roof was lowered there would be no impact on the living conditions. Ms. Gaines responded in order to lower the roof to 25 feet, the extra pitch would need to be removed and they would need to follow a standard gabled roof. There would be no impact to the living space. Discussion ensued.

Mr. Wilkening commented it was stated this house would not be taller than other houses in the area and asked how tall the house is their neighbor to the south from the lakeside. Ms. Gaines responded she did not know at this time.

Mr. Wilkening discussed the need for the stormwater to be evaluated to ensure it flows correctly with the use of a sheer wall due to the garage foundation.

Mr. Recupito asked if there was any public comment for this petition.

Mr. Adam Avila, **7522 Lake Shore Drive**, stated he was for the variance and he feels the proposed aesthetics of the house will make the property. He feels their proposed addition will improve the value of his property.

Mr. John Geiger, **7517 Lake Shore Drive**, stated he is for the property and feels this is appropriate for a property around the lake. Mr. Wilkening advised Mr. Geiger they have legal criteria that needs to be met to grant a variance.

Mr. Recupito asked if there was any further public comment for this petition; seeing none, Mr. Recupito closed the Public Hearing for this petition.

Mr. Austgen discussed the Findings of Fact that are required to be met by both Indiana State Code and the Zoning Ordinance. Mr. Recupito read the Findings of Fact required to be met for a Developmental Variance.

Mr. Recupito discussed while the design of the house appears to be a great design, the Board has a legal responsibility to ensure that variances granted meet the required Findings of Fact. If the reason for the variance is solely for an aesthetic reason, it does not meet the Findings of Fact requirements.

Mr. Wilkening asked how tall the house would be from top of foundation on the lakeside. Ms. Gaines responded it would be approximately 36 feet.

Ms. Gaines inquired why the height was reduced to 25 feet for Legacy Lots. Mr. Recupito discussed why the Legacy Lot Overlay District was created and the Bulk Standards for this Overlay District. Mr. Kiepora discussed another reason for the reduced height in the Legacy Lot is to prevent the view of the lake from being blocked.

Ms. Gaines commented while the parameters of the Legacy Lot allow for an increase in the building footprint, she feels it restricts what designs can be done with the roof of the house. A house that has 2-stories would only allow for an additional 5 feet above the ceiling line on the second floor.

Mr. Recupito asked how tall each story would be. Ms. Gaines responded each floor would be approximately 8 feet.

Mr. Wilkening commented other than the mention of aesthetics, there has not been a mention of hardships. Ms. Gaines stated if they were required to reduce the height, it would decrease the ceiling height on the second floor. Mr. Cannon advised if the ceiling height is reduced, it would have an impact on their living conditions for the second floor. Discussion ensued.

Mr. Kiepora asked Ms. Gaines to show the hardship. Ms. Gaines responded by following the Zoning Requirements only houses shaped like a box would be built. This would not be attractive to be seen along the lake. Mr. Recupito stated they understood that. However, they need to follow the Findings of Fact.

Mr. Recupito asked Ms. Gaines if they meet the first requirement of the Findings of Fact. Ms. Gaines responded she believes they do as the proposed improvements to the house will be able to enhance the community. Mr. Recupito asked Ms. Gaines if they are meeting the second requirement. Ms. Gaines responded they will help beautify the neighborhood and improve the values of adjacent properties.

Mr. Recupito asked if they met the third requirement of the Findings of Fact. Ms. Gaines asked for clarification on the requirements for the third Findings of Fact. Mr. Austgen clarified this requirement states that the third Findings of Fact discusses if the Petitioner is able to use their property following the guidelines of the Zoning Ordinance.

Ms. Gaines stated her argument for the third Findings of Fact would be that their proposed house would be similar to other houses that are over the 25 feet height restriction along the lake. Mr. Recupito advised this would not fulfill that requirement. The final Findings of Fact is if the Zoning Ordinance is followed, the property owner is able to utilize their property without difficulties.

Mr. Austgen discussed the history and time taken in the creation of the Legacy Lot Overlay and the update to the Zoning Ordinance. In the discussion occurring for this petition, it appears the third Findings of Fact is not been met, and noted the Findings of Fact are required to be met. Discussion ensued.

Mr. Wilkening asked if the roof were to be lowered would there be interference with the duct work in the ceiling. Ms. Gaines responded the duct work will be in the attic which is covered by a 4-12 pitch. If the roof were to be lowered, there would not be enough cavity to install the necessary duct work. Mr. Recupito asked if Ms. Gaines is stating the house cannot be built to 25 feet. Ms. Gaines responded that a 2-story house with a 25-foot height will result in houses with no character. Her argument is the property will not be developed due to lack of interest from potential buyers to build the house.

Mr. Cannon stated if the roof were to be dropped, it would impact the HVAC. Mr. Wilkening suggested the Petitioners request a deferral to re-evaluate their plans and present updated plans at their next meeting.

Mr. Recupito asked if the Petitioners can be provided a copy of the Findings of Fact. Mr. Salatas responded in the affirmative. Ms. Abernathy advised in addition she would send the Developmental Variance worksheet that has been created to the Petitioner, if a deferral is requested.

Mr. Cannon requested a deferral.

A motion was made by Mr. Wilkening and seconded by Mr. Kiepura to defer this item to the October BZA Meeting. Motion passed unanimously by roll-call vote:

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

2. 2022-40 Hanyzewski – 12511 Marsh Landing Parkway – Developmental Variance
Owner/Petitioner: Andrew Hanyzewski, 12511 Marsh Landing Parkway, Cedar Lake, IN 46303
Vicinity: 12511 Marsh Landing Parkway, Cedar Lake, IN 46303

Mr. Recupito advised the next order of business was for a Developmental Variance to allow the Petitioner to construct a 6-foot privacy fence on a corner lot served by sidewalks less than the allowable 20 feet from the Right of Way line by Petitioner Mr. Andrew Hanyzewski for a property located in the vicinity of 12511 Marsh Landing Parkway. Mr. Austgen advised the legals were in order.

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

Ms. Abernathy advised the Petitioner is requesting a variance to install a 6-foot privacy fence along the utility easement line, which is 10 feet from the Right of Way line. The Zoning Ordinance does not allow for the fence to be closer than 20 feet due to the lot being served by a sidewalk. Discussion ensued on the requirements for a fence on a corner lot served by sidewalks.

Mr. Hanyzewski discussed he is not entirely sure where his property line is. Mr. Bunge advised with the subdivision being newer, there should be marks to indicate the corner of the lot.

Mr. Kiepura asked if the Petitioner retrieved HOA Approval for the fence. Mr. Hanyzewski responded the HOA has approved the fence and distributed the HOA Approval to be seen by the Board. Ms. Abernathy

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advised the Petitioner did not have the HOA Approval Letter when submitting the paperwork for the variance. Discussion ensued regarding the HOA Approval.

Mr. Wilkening discussed the proposed plan does not have a distance shown on the Plat of Survey to where he would like the fence. Mr. Hanyzewski responded he knew the fence would extend 35 feet past the house. Mr. Recupito commented the owner should locate the property markers and measure how far the fence will be from the property line.

Mr. Kiepura stated typically they do not allow fences that close to the sidewalk. There was a similar petition from Havenwood that was denied in the past. Mr. Hanyzewski advised his intention is not to go up to the sidewalk, but to be around 5 to 6 feet from the sidewalk. Mr. Salatas advised if the Petitioner were to go that close, it would be located within the utility easement. Discussion ensued.

Mr. Kiepura asked the Petitioner what is the hardship. Mr. Hanyzewski responded the proposed area for the fence is one of the flattest parts of his property. His property contains a lot of slopes. In addition, he has a 4-year-old child and two dogs they would like to be able to contain in the yard.

Mr. Bunge asked if either of his direct neighbors have any fences he would be connecting to. Mr. Hanyzewski responded in the negative.

Mr. Recupito asked if there was any public comment for or against this item; seeing none, Mr. Recupito closed the Public Hearing for this petition.

Mr. Recupito stated while there could be a debate on the lay of the land for the hardship, his biggest concern would be having the approval from the HOA for the fence to be in the side yard. Mr. Kiepura discussed the HOA Approval was for a privacy fence in the rear yard. The approval letter does not contain an approval for the side yard or how close the fence will be to the sidewalk.

Mr. Recupito asked Mr. Kiepura with his experience in the subdivision, if HOA approval was granted often for requests like this petition. Mr. Kiepura responded in the negative.

Mr. Salatas stated his concerns with an approval would be the vision triangle and the proposed fence being located in the utility easement.

Mr. Hanyzewski asked what would happen if the fence was to be built along the 30-foot building line. Mr. Salatas advised he would not need a variance.

Mr. Hanyzewski requested a deferral. Mr. Kiepura advised with the deferral, he would need to have his HOA Approval updated to reflect the request of having the fence in the side yard and provide that letter to Town prior to the October BZA Meeting.

A motion was made by Mr. Wilkening and seconded by Mr. Bunge to defer this item to the October BZA Meeting. Motion passed unanimously by roll-call vote:

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

Public Comment: Mr. Recupito opened the floor for public comment.

Mr. Bunge asked if a Building Permit was pulled for the patio being built on Bugaboo's lakeside property. Mr. Salatas advised due to the patio being constructed with patio pavers a Building Permit was not needed. There had been a variance granted in the past for the boat rental and the business. They are two separate properties and businesses, and the business along the lake has a separate liquor license. Discussion ensued.

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Mr. Austgen advised they are working on having a training session for the BZA over the variance process. He will discuss with Mr. Salatas the potential of creating documents to provide to BZA Applicants to explain the application process, the Findings of Fact, and what will be expected of the Petitioner. Mr. Salatas commented the application for the BZA needs an update.

Mr. Kiepora asked Mr. Austgen for some clarification regarding the Findings of Fact. Mr. Austgen responded the Petitioner has the burden of proving all the Findings of Fact for either a Variance of Use or a Developmental Variance. Additionally, the Board is permitted to impose additional reasonable conditions. Within the Zoning Ordinance, they are allowed to include more restrictive conditions than what is allowed by state statute. Discussion ensued.

Ms. Abernathy advised the Board she will send them the Variance Worksheets that will be provided to the Petitioners. The worksheets include the language that all criteria needs to be met or the variance may not be approved and that if they can prove all the Findings of Fact the variance may be granted.

Mr. Bunge asked if decking is not included in part of the square footage requirements. Mr. Salatas responded in the negative. Livable space is what is calculated towards square footage. Mr. Wilkening asked if balconies are included in the calculation of lot coverage. Mr. Salatas responded in the negative and explain that it is due to the overhang and no foundation. Discussion ensued.

Adjournment: Mr. Recupito adjourned the meeting at 7:30 p.m.

TOWN OF CEDAR LAKE BOARD OF ZONING APPEALS

Nick Recupito, Chairman

Jeff Bunge, Vice Chairman

John Kiepura, 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 5-14-1.5-4(b) which states:

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

(1) The date, time, and place of the meeting.

(2) The members of the governing body 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: September 8, 2022 Minutes