



**CEDAR LAKE BOARD OF ZONING APPEALS MINUTES
CEDAR LAKE TOWN HALL, 7408 CONSTITUTION AVENUE, CEDAR LAKE,
INDIANA**

October 13, 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, October 13, 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, Planning Director. **Absent:** None.

Approval Of Minutes:

Mr. Recupito entertained a motion for the Minutes of the September 8, 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. 2022-39 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 Old 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 had been reviewed the month prior and they are in order. The Public Hearing may continue for this item.

Mr. Damatio Cannon stated they had attempted multiple sketches for the property before determining that without the height variance, they will be unable to house the HVAC ducts in the ceiling. If the height were to be lowered any further, it would leave the property with exposed duct work. Exposed duct work would be a health hazard to his family, in addition to not being in compliance with building codes and regulations.

Mr. Recupito asked Mr. Cannon if the plans have remained the same. Mr. Cannon responded in the affirmative.

Ms. Abernathy advised the Findings of Fact form is included in the BZA's packet.

Mr. Recupito discussed the approval of Zoning Ordinance 1402 which allows for the Legacy Lot Overlay District and asked if they are able to build a house that is 25 feet or less within this Zoning Classification. Mr. Kiepura commented the design presented is not able to be built at 25 feet. A two-story house is capable of being built at 25 feet and under.

Mr. Cannon advised they were able to reduce the height of the house down to 26.5 feet to obtain the pitch needed. It was determined this was the lowest pitch they could build that would allow for the mechanics to be installed. Mr. Kiepura commented he would have liked to see documentation supporting his claim. Discussion ensued.

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 discussed the third Finding of Fact of practical difficulty needing to be proven and the potential issues that could occur due to granting a variance due to a petitioner wanting a specific design. Mr. Cannon stated that if he were to remove the peak, it would reduce the wall height from 8 feet to 7 feet and he would not be able to install the duct work.

Mr. Recupito inquired if Mr. Cannon or his architect looked at changing the design of the house. Mr. Cannon responded they attempted to change the height of the roof, and if they changed the roof line, it would not allow for the height needed to install the duct work in the ceiling. Mr. Kiepura clarified Mr. Recupito was not asking about the current design presented to the Board. The question asked referred to looking at a different style house. Mr. Cannon stated that if they went with a traditional roof line, the height of the house would not allow for the duct work to be installed due to the house being too short. Discussion ensued.

Mr. Kiepura asked Mr. Cannon what is the size of his lot. Mr. Cannon responded it is less than 5,000 square feet, and the house size with the addition would be 2100 square feet.

Mr. Bunge discussed his thoughts being similar to those of Mr. Recupito and Mr. Kiepura regarding the Legacy Lot Overlay District. Additionally, he understands the design is the style desired by the Petitioner; however, he does not know if this would meet the justification for the third Finding of Fact.

Ms. Abernathy commented the Plan Commission extensively discussed and vetted the Legacy Lot, including the height requirement. The desire had been to keep the height low to reduce lake views from being blocked.

Mr. Cannon stated for his property, the only neighbor who's view he could potentially impede would not be impacted due to the angles of the houses and the distances between his house and his neighbors' houses to the east and west.

Mr. Recupito discussed how decisions are made based off of the Findings of Fact. To him, it does not appear that this variance is meeting all three Findings of Fact, based on what has been presented tonight and the discussions from the BZA meeting the month prior. Mr. Cannon stated if he took away the design, there would not been enough height for him to build the house. Further discussion ensued regarding the third Finding of Fact and if this Finding of Fact was being met.

Mr. Recupito asked what was going to be the side yard setback. It was discussed the existing side yard setback is less than 3 feet and the proposed setback will be 5.5 feet. Mr. Recupito asked if there was an aggregate side yard setback required in the Legacy Lot Overlay. Ms. Abernathy advised it had been discussed during the creation of the Legacy Lot Overlay, before ultimately determining a set side yard setback requirement, provided the nonconformance of a structure is not increased. Discussion ensued.

Mr. Austgen advised the Board can make a consideration on potentially approving a variance if it is determined that the property is insufficient in size, characteristics, and the like, which would prevent the property from being improved safely and properly. Mr. Kiepura asked for clarification on Mr. Austgen's

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discussion and if they can approve the variance based on the characteristics of the house. Mr. Austgen responded it is within their jurisdiction and discretion to do so, if they find it appropriate.

Discussion ensued regarding the various house styles and height around the lake, and the height restriction for a Legacy Lot.

Mr. Recupito asked from what location is the height of the house measured. Mr. Salatas responded that the Town measures from the foundation to the height from the street side for an R-2 Zoning District. The height in the Legacy Lot District does not include this regulation. The height is just listed at 25 feet. Mr. Kiepura inquired where the height was determined. Ms. Abernathy advised it had been requested that the height be calculated at the 12 inches from top of foundation. Discussion ensued.

Mr. Recupito advised Mr. Cannon if the variance is denied, that a year needs to pass before a new petition can be filed, unless there is substantial change to the plan.

A motion was made by Mr. Wilkening and seconded by Mr. Kiepura to approve the Developmental Variance to allow the Petitioner to construct an addition on the home with an overall height of 26.5 feet with the Findings of Fact, in particular the Variance will not be injurious to public health, safety or morals; use and value of adjacent property will not be affected; and strict application of the Zoning Ordinance will result in practical difficulty. Motion failed 2-Ayes to 3-Nays by roll-call vote:

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

Mr. Recupito entertained a second motion for this item.

A motion was made by Mr. Bunge and seconded by Mr. Jackson to deny this Developmental Variance on the third Finding of Fact that the strict application of the Zoning Ordinance will result in any practical difficulties with the property is not being met, with the other Findings of Fact. Motion passed by 3-Ayes to 2-Nays by roll-call vote:

Mr. Jackson	Aye
Mr. Wilkening	Nay
Mr. Kiepura	Nay
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. Ms. Abernathy advised the Board the Petitioner is requesting a withdrawal.

Withdrawal was acknowledged by the Board.

New Business:

1. 2022-41 Burrink – 14335 Truman Street – Developmental Variance
Owner/Petitioner: Robert & Kathleen Burrink, 14335 Truman Street, Cedar Lake, IN 46303
Vicinity: 14335 Truman Street, Cedar Lake, IN 46303

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Mr. Recupito advised the first order of New Business was for a Developmental Variance to allow the Petitioner to construct an addition onto an existing house with an overall height of no greater than 36 feet, for the side yard setback along the north side of the property to be 4.6 feet to be consistent with the existing structure, and for an overall lot coverage of 39% by Petitioner Mr. Robert Burrink.

Ms. Abernathy advised the Petitioner is requesting a deferral to the December meeting, due to a change in his plans and the Petitioner will be out of town for the November BZA Meeting. With the change in plans, there will need to be an update to the advertisements.

Mr. Austgen advised his recommendation with the deferral is to include the requirement to re-advertise for the December BZA with the deferral.

A motion was made by Mr. Bunge and seconded by Mr. Kiepura to defer this item to the December BZA Meeting and for the petition to be re-advertised. Motion passed unanimously by roll-call vote:

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

2. 2022-42 Gebo – 14815 Ivy Street – Developmental Variance

Owner/Petitioner: James Gebo, 14815 Ivy Street, Cedar Lake, IN 46303

Vicinity: 14815 Ivy Street, 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 through lot served by sidewalks by Petitioner Mr. James Gebo. Mr. Austgen advised the legals are in order.

Mr. Gebo stated he would like to install a fence on his property, as his property currently does not have a fence. He has two dogs, a 6-month-old dog and a 7-year-old dog that he would like to be able to keep contained within the fence.

Ms. Abernathy advised the intent is to install a 6-foot privacy fence on a through lot. The Zoning Ordinance allows for a privacy fence that is 4 feet in height or would need to be 50% open. Mr. Gebo intends to connect his fence to his neighbors' fences to the north and south with the intent on matching in style.

Mr. Wilkening asked Mr. Gebo if his back yard is off of Parrish Avenue. Mr. Gebo responded in the affirmative.

Discussion ensued regarding other similar Variances in the area and the potential of updating the Zoning Ordinance to allow for 6 feet privacy fences on through lots.

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. Bunge asked Mr. Gebo if his neighbors' fences were built along the same line as the utility easement. Mr. Gebo responded in the affirmative.

Mr. Bunge asked Mr. Gebo if he intended to have a gate along the fence for property maintenance. Mr. Gebo responded in the affirmative. He intends to install gates on the front and rear fence lines.

A motion was made by Mr. Wilkening and seconded by Mr. Kiepura to approve the Developmental Variance to allow the Petitioner to construct a 6-foot privacy fence on a through lot, with the contingencies that the fence is compatible in style to the neighbors' fences, and will tie-in with the existing fences on the properties

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located north and south of the Petitioner 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

3. 2022-43 Massura – 8208 Lake Shore Drive – Developmental Variance

Owner/Petitioner: Beverly Massura, 8208 Lake Shore Drive, Cedar Lake, IN 46303

Vicinity: 8208 Lake Shore Drive, Cedar Lake, IN 46303

Mr. Recupito advised the next order of business was for a Developmental Variance to allow the Petitioner to construct a 4-foot chain link fence in the front yard by Petitioner Ms. Beverly Massura. Mr. Austgen advised the legals are in order.

Ms. Massura stated they had installed the fence and had not known they would need a Building Permit.

Ms. Abernathy advised one of the Water Maintenance workers from Public Works discovered the fence being installed without a Building Permit and advised one of the Building Inspectors. When the Building Inspector arrived, a new chain link fence had been installed. Within the packet provided to the Board, a couple of street view photographs from Google show there had been an existing chain link fence. When Ms. Massura applied for the Building Permit, she was advised a Developmental Variance would be needed due to the Zoning Ordinance not allowing for a chain link fence in the front yard.

Mr. Recupito asked Ms. Massura if the new fence was installed in the same location as the previous chain link fence. Ms. Massura responded in the affirmative. Mr. Kiepura noted the fence had been extended to in front of the house. Ms. Massura advised when they purchased the property, the fence had been in front of the house.

Mr. Kiepura commented the photographs show the new fence as being black and inquired what was the coating on the fence. Ms. Massura responded it was a vinyl coating.

Mr. Bunge asked if the fence is located along the front property line. Ms. Abernathy responded in the affirmative and advised that one of the photographs included in the Board's packet shows the fence set back from the road. However, she is unable to provide the exact distance from the street at this time.

Mr. Jackson inquired when the fence was installed. Ms. Abernathy responded the Building Permit and Developmental Variance application was submitted on August 25, 2022.

Mr. Recupito asked Ms. Massura for the reasoning of installing the fence in the front yard. Ms. Massura responded her husband and herself are both in their 80s and prefer to be able to sit in the front yard of their property. With the traffic on Lake Shore Drive, they feel safer by having a fence located in the front yard.

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 commented what has been installed is an improvement to the old fence. However, this style of fence is not allowed per the Zoning Ordinance.

Mr. Bunge inquired how long Ms. Massura has owned the property. Ms. Massura responded they have owned it for approximately 10 years. Mr. Recupito asked if the previous had been in poor condition when they purchased the property or any repairs conducted on the fence. Ms. Massura advised they had not done any previous repairs or improvements to the fence.

Discussion occurred regarding what is allowed by Zoning Ordinance for a fence in the front yard.

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Mr. Kiepura stated the problems that arise with this request are the height and material of the fence, in addition to the fence being installed. Mr. Bunge discussed the potential that the installed fence was replacing a fence that had been existing and grandfathered in. Ms. Abernathy advised the Board, that when a structure or fence is removed from a property, the Town views it as if the structure did not exist. Discussion ensued.

Mr. Recupito asked Ms. Massura if she would be willing to modify the fence to bring it into compliance. Ms. Massura responded that due to financial and health reasons, they would be unable to modify the fence.

Mr. Wilkening asked if there was additional fencing along the western boundary of the property. Ms. Massura responded there is old fencing along that side of the property. Discussion ensued.

Mr. Recupito inquired if there would be any differences if the permit had been turned in prior to the installation of the fence. Ms. Abernathy responded the Petitioner would still need to appear in front of the Board to request a variance to remove the old fence and replace it with the new fence.

Mr. Kiepura asked Ms. Massura who would maintain any overgrowth along the fence line. Ms. Massura responded either she would or an individual who she pays for lawn maintenance.

Mr. Bunge asked if the fence installer had advised her to pull a Building Permit for the fence. Ms. Massura responded in the negative and stated they had just been advised to call 811 To Dig.

Mr. Austgen discussed the potential of this being viewed as a legal nonconforming change. The old chain link fence was replaced by the new chain link fence, as demonstrated in the photographs. The variance request being could be considered a remediation to a structure that needed to be replaced due to its state of disrepair. The Board has two decisions to consider, one of which will allow the preservation of a legacy use and the other could be potentially volitive in nature based on the motion made.

Discussion ensued at length regarding the fence being legal, nonconforming and the potential of allowing it to remain for safety considerations.

Mr. Austgen advised Ms. Massura of the need to submit and obtained a Building Permit, and the need for an inspection for the fence. Ms. Abernathy stated the Building Department has a permit on file if the variance is approved.

A motion was made by Mr. Wilkening and seconded by Mr. Kiepura to approve the Developmental Variance to allow the Petitioner to construct a 4-foot chain link fence in the front yard of vinyl, coated, woven material nature with the Findings of Fact, namely that the fence is the replacement for an existing non-conforming fence. Motion passed unanimously by roll-call vote:

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

4. 2022-45 McCants – 14935 Ivy Street – Developmental Variance

Owner/Petitioner: Marty McCants, 14935 Ivy Street, Cedar Lake, IN 46303

Vicinity: 14935 Ivy Street, 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 through lot served by sidewalks along the property line off of Parrish Avenue. Mr. Austgen advised the legals are in order.

Mr. McCants stated his petition is similar to Mr. Gebo's petition. He recently purchased the house and they would like to install fence in the rear yard along Parrish Avenue.

Ms. Abernathy concurred with Mr. McCants statement on similarities between the agenda items. The main difference being the neighbor to the north does not have a fence. The fence will tie-in to the neighbor's property to the south.

Mr. Bunge asked if Mr. McCants intended to build over the utility easement along the property line. Mr. McCants stated his intent is to build it to the property line. Mr. Bunge advised Mr. McCants if there needs to be work conducted in the easement, he will need to pay for any replacement costs.

Mr. McCants asked if the fence needs to be removed for utility work, would he need to come back to the BZA. Mr. Salatas advised if the Town requests the fence to be removed or the Town needs to remove the fence to work within the utility easement, he would be allowed to replace the fence. However, if he removes the fence and abandons the approved variance, then a new application to the BZA would need to be made.

Discussion ensued regarding the styles of fencing along Parrish Avenue.

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.

A motion was made by Mr. Wilkening and seconded by Mr. Kiepura to approve the Developmental Variance to allow the Petitioner to construct a 6-foot privacy fence on a through lot served by sidewalks along the property line off of Parrish Avenue with the Findings of Fact and the survey provided within the Variance Application to serve as an exhibit. Motion passed unanimously by roll-call vote:

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

5. 2022-46 Frey – 109 Broadway – Developmental Variance

Owner/Petitioner: Donald Frey, 332 East 125th Place, Crown Point, IN 46307

Vicinity: 109 Broadway, Cedar Lake, IN 46303; aka 13315 Lincoln Way, Cedar Lake, IN 46303

Mr. Recupito advised the next order of business was for a Developmental Variance to allow the Petitioner to have a lot size of 6,250 square feet, a front yard setback of 18.3 feet, and a side yard setback of 2 feet on an existing lot with an existing structure. Mr. Austgen advised that the legals need to be reviewed, and any motion would be contingent upon the review of legals.

Mr. Salatas advised the Town has requested Mr. Frey to go through the One Lot Subdivision process, to help clean up the property for which he obtained a Variance of Use. Currently the property has two addresses, and they are attempting to go through the process to correct the addresses to assist emergency services, the post office, and the like to allow for these services to respond to the correct location.

Mr. Salatas stated there is no intent to change anything on the building. There are existing legal, nonconforming aspects to the property, that due to the One Lot Subdivision process are now required to be brought into compliance or receive BZA approval.

Mr. Austgen advised he would receive the legals from Ms. Abernathy for review. He would advise the Board regarding the legals for this petition. Mr. Recupito asked if the recommendation would be for any action taken to be contingent upon legal review. Mr. Austgen responded in the affirmative.

Mr. Austgen asked Mr. Salatas if one item needed to be done before the other. Mr. Salatas responded the variances requested are ministerial. The desire would have been for everything to have been completed when the Variance of Use was obtained.

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Mr. Wilkening asked if there were any other properties that would need to go through the subdivision process. Mr. Salatas responded the east side of the street has been cleaned up. This should be the last item along Lincoln Way to be cleaned up on the east side. Discussion ensued.

Mr. Recupito asked Mr. Austgen if they should proceed with the variance without a Petitioner being present. Mr. Austgen advised having a Petitioner present due to the complexity of the property and its location in the Town.

Mr. Recupito asked if the Petitioner could be present at the November meeting. Ms. Abernathy responded the Petitioner did state if a deferral was given, he could be present at the November meeting.

Mr. Austgen advised deferring the item and providing notice to the Petitioner to appear at the November BZA Meeting.

A motion was made by Mr. Kiepura and seconded by Mr. Wilkening to defer this item to the November meeting with a notice to be sent to the Petitioner to attend the next 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. Wilkening discussed the change to lot sizes to assist with rear yard setbacks and in his opinion there will be similar problems with Legacy Lots and the height requirements. Mr. Recupito commented when Legacy Lots were reviewed by the Plan Commission, there was concern for lake views. There was leniency given on side yard setbacks, but restriction on heights. Discussion ensued.

Adjournment: Mr. Recupito adjourned the meeting at 7:35 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:

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: October 13, 2022 Minutes