



CEDAR LAKE BOARD OF ZONING APPEALS MINUTES
CEDAR LAKE TOWN HALL, 7408 CONSTITUTION AVENUE, CEDAR LAKE, INDIANA
January 12, 2023 at 6:30 pm

CALL TO ORDER:

Mr. Bunge called the Board of Zoning Appeals meeting to order at 6:30 pm, on Thursday, January 12, 2023 with its members attending on-site. The Pledge of Allegiance was recited by all.

ROLL CALL:

Members Present Via Zoom: None. **Members Present:** Eric Burnham; Greg Parker; Ray Jackson; John Kiepura, Vice Chairman; Jeff Bunge, Chairman. A quorum was obtained. **Also Present:** David Austgen, Town Attorney; Ashley Abernathy, Planning Director; Cheryl Hajduk, Recording Secretary. **Absent:** None.

1. Nomination and Appointment of Officers:

a. Chairman

Mr. Bunge stated the first order of business was for the nomination and appointment to the Chairman for the Board of Zoning Appeals and asked if there were any nominations. A nomination was made by Mr. Kiepura and seconded by Mr. Parker to nominate Mr. Bunge as Chairman of the Board of Zoning Appeals. Motion passed unanimously by roll-call vote:

Mr. Burnham	Aye
Mr. Parker	Aye
Mr. Kiepura	Aye
Mr. Bunge	Aye
Mr. Jackson	Aye

b. Vice Chairman

Mr. Bunge stated the next order of business was for the nomination and appointment to the Vice Chairman for the Board of Zoning Appeals and asked if there were any nominations. A nomination was made by Mr. Bunge and seconded by Mr. Jackson to nominate Mr. Kiepura as Vice Chairman of the Board of Zoning Appeals. Motion passed unanimously by roll-call vote:

Mr. Burnham	Aye
Mr. Parker	Aye
Mr. Kiepura	Aye

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Mr. Bunge Aye

Mr. Jackson Aye

Approval of Minutes:

Mr. Bunge entertained a motion for the Minutes of the November 10, 2022 and December 8, 2022 Meetings; a motion was made by Mr. Kiepura and seconded by Mr. Jackson to approve the same. Motion passed unanimously by roll-call vote:

Mr. Burnham Aye

Mr. Parker Aye

Mr. Kiepura Aye

Mr. Bunge Aye

Mr. Jackson Aye

Old Business:

**1. 2022-47 White – 8017 West 146th Avenue – Developmental Variance – Continued
Public Hearing**

Owner/Petitioner: Glenn & Heather White, 8017 W 146th Ave, Cedar Lake, IN 46303

Vicinity: 8017 W 146th Ave, Cedar Lake, IN 46303

Mr. Bunge stated the first order of Old Business is to allow the Petitioner to construct a 20-foot by 26-foot garage with 5 feet of separation between the garage and the house. Mr. Austgen advised the legals are in order.

Ms. Abernathy had communication with the contractor and stated he would be at the meeting.

Mr. Kiepura asked if they presented any more drawings. Ms. Abernathy stated one of the building inspectors went out and they didn't see why it could not be moved back to 6 feet and a 9-foot separation. The contractor thought the 20-foot alleyway has not been vacated and looking at their legal description, the 20-foot alleyway was vacated by Commission Court Order No. 28. The property was deeded the whole 20-foot alleyway. They were going to talk to their client and see about moving it back to comply with the 6-foot side yard and have the 10-foot separation.

Mr. Bunge entertained a motion for this item. A motion was made by Mr. Parker and seconded by Mr. Jackson to defer this Developmental Variance to the next meeting. Motion passed unanimously by roll-call vote:

Mr. Burnham Aye

Mr. Parker Aye

Mr. Kiepura Aye

Mr. Bunge Aye

Mr. Jackson Aye

2. 2022-52 Kracht– 12841 Wicker Avenue – Variance of Use

Owner: Cedar Lake Commercial, LLC, PO Box 657, St. John, IN 46373

Petitioner: Kendra Kracht, 530 E South Street, Crown Point, IN 46307

Vicinity: 12841 Wicker Avenue, Cedar Lake, IN 46303

Mr. Bunge stated that the next order of Old Business is for a Variance of Use to allow Petitioner to operate a B-3 use in an existing building located in a B-2 Zoning District. The Business Operating plan to include: a retail store, three rage rooms, a room for glass throwing only, one stage for open mic night, snack shop, arcade room and for additional use for two private studios for an art studio and music studio to be located upstairs not accessible to the public.

Mr. Austgen advised the legals are in order.

Mr. Vis, Vis Law, on behalf of the owner and Petitioner, stated the Petitioners would like to open an entertainment venue. The current zoning is a B-2, but is in a B-3 overlay.

Mr. Vis stated the clients are asking for this entertainment venue to include a retail store, three rage rooms, a room for glass throwing only, one stage for open mic nights and anticipating two nights a month, snack shop, arcade room and for additional use for two private studios for an art studio and music studio. Mr. Vis distributed a Surveyor Report to the Board for review and discussed the location of the parking lot, parking spaces and overview of the floor plan. Discussion ensued.

Ms. Abernathy commented when she spoke with Mr. Oliphant regarding what type of parking schedule would be needed, a rage room and amusement uses are not called out with the exception of bowling alleys. The Zoning Ordinance has shopping centers in the parking schedule and read the definitions for shopping centers. In discussions with Mr. Oliphant, it was agreed that the shopping center parking schedule is what would be acceptable for this petition.

Mr. Bunge asked does this include the practice space upstairs or the art studio. Mr. Vis stated those are anticipated for the client. Discussion ensued regarding square footage.

Discussion ensued regarding the parking spots and where they would be located.

Mr. Bunge opened the floor for public comment.

Mr. John VanBrien, 12828 Wicker Avenue, stated they are just North of the proposed venue and is against this project. A rage room, glass throwing room on Route 41 is bad public policy. The Petitioners have not reached out to local owners that he is aware of. He has not heard anything from the Petitioners as to how many security people would be needed, if any. Discussion ensued. He also commented to look at having this venue on the outskirts where there are bars and away from public other businesses and residences.

Ms. Abernathy commented she received communication per email from Mr. Dan Mihajlovic. His property is to the rear and his mother's property is the one directly South.

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As per our conversation this morning, I am sending this email due to the fact I will not be in attendance for the board meeting on January 12th. I am out of town for work.

In addition to my first letter sent, I wanted to present more insight into our concerns. My mom has lived at 12845 Wicker for over fifty years. She has seen many businesses operate at 12841 for over 40 years and not once complained or expressed concerns, until now due the planned increased activity of subject property. The concerns being public/personal safety with traffic flow in and out onto US41 and parking cars onto 12845.

12841 has a shared ingress/egress access to US41, (one entrance/exit). The problem isn't entering the lot, it's exiting the lot. Cars will exit (at times) to both properties north and south of the subject property with minimal business activity, we are the property to the south (12845). With a planned increase in business activity, we feel that this behavior will get worse along with using 12845 as a parking area for overflow of business activity.

Mr. Bunge asked if there was any further public comment; seeing none, Mr. Bunge closed the floor for public comment.

Mr. Vis stated his clients would install permanent structure along the property to ensure nobody can traverse over the edge of the property. The fence has been repaired. The clients will have rules for their venue; including, anyone between the ages of 12 through 15 must be accompanied by a parent. Anyone between the ages of 15 through 17 must have a signed parent/guardian disclaimer on file and a copy of the parent/guardian driver's license. Protective gear will have to be worn in the rooms and there will be a maximum number of people allowed in some of the rooms. Only specific allowed items can be brought in to smash and then recycled or items can be purchased on site and not allowed to take them out of the building.

Mr. Kiepura asked about insurance and can open up liability to the Town. Can the Town request a Hold Harmless Clause in the insurance policy. Mr. Austgen responded in the negative. The Town has Tort Claim Immunity, insurance, and the police department.

Mr. Kiepura asked about what type of security would there be. Mr. Vis stated there would be only two people in a room at a time and someone will be present monitoring the rooms. Discussion ensued. Mr. Kiepura commented that he did some research on rage rooms and it could be a good thing but then it can also be a way of coping with frustration and anger. Mr. Vis stated this is why it is a controlled environment and there is a charge to do the smashing of bottles and other types of breakables.

Mr. Bunge asked about the live music and the room being 1,100 square feet and 22 parking spaces. This may bring in 40 patrons on a one given night and security may be an issue. Discussion ensued regarding enough parking spaces for patrons coming for the live music. Mr. Kracht commented on those specific nights there can be some type of security present.

Mr. Kiepura commented that the variance of uses would go from a B-2 property to a B-3 zoning district.

Mr. Parker asked if they need to make an appointment. Ms. Kracht commented people can come in with no appointment and there are other things to do besides the rage room.

Ms. Abernathy commented this was reviewed with the Building Department and the inspectors and there was no comment for the one variance of use. This would be a recommendation to the Town Council.

Mr. Bunge asked how the B-3 overlay for Route 41 Corridor works. This is a lot that is zoned B-2 to B-2 property and a B-3 use in a B-3 Overlay District. Mr. Kiepura responded in the affirmative.

Mr. Parker asked if it were Zone B-3, would they need a variance to open up a business like this. Ms. Abernathy commented for the additional use of the private studios. Discussion ensued regarding the uses of the other rooms.

Mr. Vis suggested a probationary period of six months and if there are concerns, they can come back in six months. If there are other requirements needed, and if this Body feels it appropriate; then, they can work something out on different nights and on those venue nights; to perhaps having security on staff.

Mr. Austgen stated the burden is on the Petitioner. The more unique the uses are, usually it is more of a sophisticated approval process. They are about to make a motion that will certify this matter for a recommendation to the Town Council. This should be a clean certification with all of this covered. They have remonstrator's here, property owners and the Route 41 Corridor. The documentation is good and Attorney Vis brought in floor plans, site plans, descriptions and that should be part of a certification to the Council but so should all the commitments. It can be done in the Findings of Fact with Certification from Town staff and Town Attorney. The simpler, but with a zoning commitment that Attorney Vis could prepare so they have it at their request and getting to the points is much cleaner.

Mr. Parker asked if there were other establishments like this in the Region. Ms. Kracht responded in the affirmative.

Mr. Vis commented to make a favorable recommendation and make it subject to my client's providing adequate and reasonable security protocols as well as adequate and reasonable parking lot safety measures.

A motion was made by Mr. Parker and seconded by Mr. Kiepura to defer this item to the next public meeting and work on a plan to move forward. Motion passed unanimously by roll-call vote:

Mr. Burnham	Aye
Mr. Parker	Aye
Mr. Kiepura	Aye
Mr. Bunge	Aye
Mr. Jackson	Aye

New Business:

1. 2023-02 Heavner – 7000 West 146th Avenue – Developmental Variance

Owner/Petitioner: Josh Heavner, 115 North Grant Street, Crown Point, IN 46307

Vicinity: 7000 West 146th Avenue, Cedar Lake, IN 46303

Mr. Bunge advised the first order of New Business was for Petitioner to run electric to an existing garage on a lot without a residential structure. Mr. Austgen advised the legals are in order.

Mr. Josh Heavner, 115 North Grant Street, Crown Point, IN, stated he will be meeting again with the Unsafe Board to discuss the best way to proceed with the unsafe house. He would like to have electric in the barn to help with the work that needs to be done. Discussion ensued.

Mr. Burnham asked where the barn is located to the house. Mr. Heavner responded that it is on the same property. Ms. Abernathy stated that the house is on Lots 1 through 4 and 5 and 6 on the Southside of 146th. The garage is on Lots 10, 11 and 12 on the Northside of 146th. Mr. Kiepura asked if this is a one lot subdivision. Ms. Abernathy commented that it is part of the old subdivisions that was platted before the Town was incorporated. Mr. Parker asked if these lots are on the same legal. Ms. Abernathy responded in the negative. The barn is across the street.

Mr. Burnham asked if both properties were purchased at the same time. Mr. Heavner responded in the affirmative. Mr. Burnham asked if the plan is to tear down the house that is existing there and put electricity to the barn so that the barn can be workable while building a new house across the street. Mr. Heavner responded in the affirmative. Discussion ensued regarding putting electricity out to the barn.

Mr. Kiepura asked if there is a dedicated road separating the house to the garage. Mr. Heavner responded in the negative. Ms. Abernathy stated the garage received an original variance and the variance of use was approved in 1994. In 1994, variances of uses were required for accessory structures. On the lot without a primary structure, and were required to go in front of the Town Council. In 1994, it received a 5-0 approval for the accessory use on the lot and also in 1994, the September Town Council meeting it received the favorable recommendation. A variance was obtained and received in 1994. Discussion ensued.

Mr. Bunge stated the picture in the packet shows a carport overhang. The pavement shown on the bottom right-hand corner is actually the original pour of the carport and before they built the garage across the street and would have been the only structure for storage area for the house. Mr. Kiepura asked if the garage is grandfathered in. Mr. Parker commented the legal non-conforming is what it is called. Mr. Kiepura asked do we allow electricity to run to the garage. Mr. Bunge stated in the variance request on a lot without a residential structure. Mr. Austgen

stated it is legal non-conforming. It is there from an approval by a body in this Town 25-30 years ago.

Mr. Kiepura stated they would like to see a timeline. Mr. Heavner stated the house is going to be demolished in the Spring. Discussion ensued regarding putting the electricity in the barn and having an inspection afterwards.

Mr. Bunge asked if there were any remonstrators for this variance.

Mr. Patrick Couwenhoven, 7111 W. 146th Avenue, stated the house needs to be demolished. Discussion ensued regarding the house being demolished. Mr. Parker stated this is going through the process with the Unsafe Building Committee.

Ms. Sandra Bunge, 14619 Bell Place, stated she has concerns because of the smoke that bellows sometimes from the Heavner property. Mr. Parker stated there is an ordinance stating there should be no fires. Discussion ensued. Mr. Burnham stated she should call the Police or Fire Department in the future.

Mr. Terry Broadhurst, 14513 Morse Street, remonstrated against this petition. His concern is that there will not be a road if Mr. Heavner does not build a house on the property. He is also concerned because Mr. Heavner regraded a portion of the road which created a drop off. Discussion ensued at length.

Mr. Bunge asked if there were any other remonstrators against this Petition; seeing none, Mr. Bunge closed the public portion of this hearing.

Mr. Bunge asked how do we enforce something to get a primary structure on this parcel. Mr. Parker stated that with two different properties that they can be required to put a structure on the other lot. Mr. Austgen stated this is old Cedar Lake and nothing happens the same way it was. Mr. Parker stated there are two separate structures and neither one of them are the anchor to the other one. Mr. Bunge stated this is not the intent that this one variance of use was given. Mr. Parker commented what Ms. Abernathy said that it was approved based on its standing.

Mr. Austgen commented his opinion that this is legal non-conforming and is permitted. Mr. Parker stated whether a house is built there or not, that is an odd situation where that structure stands unless it becomes unsafe condition which it is currently. Mr. Bunge asked does Mr. Heavner need a variance. Mr. Parker stated because it is two separate properties and two separate structures, it would make sense to go and pull the permit.

Mr. Austgen commented the extension on the electricity will need to be in conformance of current codes and requirements.

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Mr. Kiepura asked can they pull a permit and put electricity in the barn without a variance. Mr. Parker stated someone thought it was a gray area and that is why it's here. Mr. Austgen responded in the affirmative.

Mr. Bunge stated this was how it was in the past and is a moot point. Mr. Austgen responded in the affirmative. There was a unanimous approval by the Board of Zoning Appeals here in 1994 with a unanimous approval of the Town Council thereafter saying here or next year. Mr. Kiepura stated they can pull the permit and do the electricity without any approval from this Board and as far as the house, it will come up in the Unsafe Building Meeting.

Mr. Kiepura asked do we need to make a motion for approval. Ms. Austgen recommended they do not make a motion and suggested they withdrawal this petition.

Ms. Abernathy clarified the reason this was brought up was historically garages across the street from a structure have come before the Board for electric to a garage because a building permit could not be processed. Mr. Bunge stated in the past there was a situation where somebody has a home lot and it is not big enough for them to put a storage structure on, they buy a lot across the street or acquire a lot across the street and now they want storage across the street without a primary structure. Discussion ensued. Mr. Austgen stated the Plan Commission petitions for one lot subdivisions and are making those parcel lots of record. This simplifies the legals and gives us more authority over what happens on the parcel itself and makes everything one on that parcel.

A motion was made by Mr. Kiepura and seconded by Mr. Burnham to accept the Petitioner's withdrawal for the variance request. Motion passed unanimously by roll-call vote:

Mr. Burnham	Aye
Mr. Parker	Aye
Mr. Kiepura	Aye
Mr. Bunge	Aye
Mr. Jackson	Aye

PUBLIC COMMENT: None was had

ADJOURNMENT: Mr. Bunge adjourned the meeting at 8:02 p.m.

TOWN OF CEDAR LAKE BOARD OF ZONING APPEALS

Jeff Bunge, Chairman

John Kiepora, Vice Chairman

Eric Burnham

Greg Parker

Ray Jackson

ATTEST:

Cheryl Hajduk, 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: January 12, 2023 Minutes