



CEDAR LAKE BOARD OF ZONING APPEALS MINUTES
CEDAR LAKE TOWN HALL, 7408 CONSTITUTION AVENUE, CEDAR LAKE, INDIANA
June 8, 2023 at 6:30 pm

CALL TO ORDER:

Mr. Bunge called the Board of Zoning Appeals meeting to order at 6:32 pm, on Thursday, June 8, 2023 with its members attending on-site. The Pledge of Allegiance was recited by all.

ROLL CALL:

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

Variance Extension Request

- 1. NYBY Development Corp – Preliminary Plat for a One (1) Lot Subdivision & Site Plan**
Owner/Petitioner: NYBY Development Corp; 1370 Dune Meadows Dr., Porter, IN 46304
Vicinity: 9710 W. 133rd Ave., Cedar Lake, IN 46303

Mr. Bunge stated the first order of business is a Petitioner requesting an extension for Developmental Variances that were made for previously granted Variances. Mr. Austgen stated legals are in order.

Mr. Nathan Vis, Vis Law, on behalf of NYBY Development, stated we are seeking an extension for four Developmental Variances that were granted last year. At the June 9, 2022 Meeting, there were three Board of Zoning Appeal approvals that were granted for a front, side and rear setback Variance. There was also a reduction in lot size from 40,000 square feet to 23,800 square feet at the August 11, 2022 Meeting. My clients were intent on a Site Plan Approval; however, at that time, based on possible applications that were before the Board of Zoning Appeals, the Town Council wanted to put a stop to any building permits that were to be issued at that point. The Moratorium couldn't be directed specifically at a particular piece of Legislation, rather the Town Council is interested in a broader review of this area. The Moratorium was in existence from August of 2022 through May of 2023, and my clients weren't able to pull a building permit or come back in front of the Board of Zoning Appeals or Plan

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Commission for future site approval. In May of 2023, the Moratorium was lifted and my clients would like to move forward.

Mr. Vis stated when a Variance is granted, it has a year to be put into implementation. We are requesting an additional extension of one year.

Ms. Abernathy commented they were in front of you last year at the June meeting for the first three Variances for reduction of the west yard setback from 15 feet to 10 feet, a reduction in rear yard setback from 30 feet to 17 feet and parking in the front yard setback. At the August meeting, the reduction on lot size was granted. Their request is to extend all four Variances at this meeting.

Mr. Parker asked if NYBY has done everything possible to ensure they meet the requirements of the Ordinance and discussed if a business goes defunct or a tenant dies, and the business model changes, due to the Variance that is granted is outside the requirements of the current Zoning Ordinance, there may be potentials that the Town might be interested in obtaining additional security for this type of activity or function on that property. Before there is a request for an extension, make sure they have done everything they can do to meet the requirements of the Ordinance and make sure that the Town has insurance that the functions stay at a certain level of expectations. Discussion ensued.

Mr. Parker commented he is concerned about the precedent being set for other parcels in that corridor.

Mr. Vis stated he understands there is a square foot deficiency and it is the understanding that the Town Engineer has reviewed and has given the approval from an Engineering perspective in terms of sight visibility, safety standpoint for the amount of greenspace that is available as well as drainage. Discussion ensued.

Mr. Parker commented he would like to see a deferral on this matter and do more research, but it would be the Board's pleasure if that's what they want.

Ms. Abernathy asked with the one Variance expiring tomorrow, would a deferral cause the Variance to expire with seeking the extensions. Mr. Austgen responded in the negative. The request with the extensions was made before the 12-month time period expired and if there is a deferral action, then they are within the time period and they should be permitted to continue until they have a disposition.

Mr. Kiepora commented they are entitled to an extension because of the Moratorium that was put into place and they could not go forward with this project. If we extend this, it would be contingent on the Plan Commission and if the Plan Commission does not approve it, the Variances are null and void. If we extend this, there is a possibility the Plan Commission will approve their plans, and everybody will be ahead of the game. The biggest issue is the square footage. Lengthy discussion ensued.

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A motion was made by Mr. Kiepura to grant the extension per Findings of Fact and seconded by Mr. Jackson. Motion passed by roll-call vote:

Mr. Parker	Nay
Mr. Jackson	Aye
Mr. Kiepura	Aye
Mr. Bunge	Aye

Old Business:

1. 2022-41 Burrink – 14335 Truman Street – Developmental Variance – Continued Public Hearing

Owner/Petitioner: Robert & Kathleen Burrink, 14353 Truman Street, Cedar Lake, IN 46303 Vicinity: 14335 Truman Street, Cedar Lake, IN 46303

Mr. Bunge stated the next order of old business is from an original request that the Petitioner was requesting a Developmental Variance to construct an addition onto an existing house with an overall height of no greater than 36 feet for the front yard setback to be reduced to 5 feet, the side yard setback along the north side of the property to be 4 feet to be consistent with the existing structure, and for an overall lot coverage of 46%.

The amended request per the March 9, 2023 BZA meeting was for a Developmental Variance to allow the Petitioner to construct an addition onto the house with a front yard setback of 5 feet, a side yard setback of 4 feet, and an overall lot coverage of 30%. Mr. Austgen commented this is in proper fashion and can proceed.

Mr. Robert Burrink, 14353 Truman Street, stated he went to the Storm Water Meetings a couple of times, but wasn't sure how the final decision was determined. Mr. Tim Kubiak and myself talked about both the Variances and storm water issues that have been going on. Mr. Kubiak was going to go look at the property and the thought was at tonight's meeting would give the final decision and how to proceed.

Mr. Parker asked if there was a resolution from the Storm Board. Ms. Abernathy commented they were going to try and get crews out there to clean up the right-of-way area, clean up dead shrubbery and clean up leaves. Discussion ensued.

Mr. Burrink commented on what involvement does he need to take and he would like to get their plans started this year with the addition to the house.

Mr. Parker commented without something from the Storm Board, he doesn't know how to proceed. Mr. Burrink stated we can push this out another month.

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Mr. Parker asked if there were any plans for reconstruction on the west side. Ms. Abernathy commented there was nothing to her knowledge. The Storm Board has limited funds and they have gotten petitioned by various subdivisions. They did a ranking system of current and outstanding stormwater projects, and created an order of the projects based on the needs. Discussion ensued.

A motion was made by Mr. Parker to defer this item to the July 13, 2023 meeting and seconded by Mr. Kiepura. Motion passed unanimously by roll-call vote:

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

New Business:

- 1. 2023-11 Olson Group Network LLC – Developmental Variance – 13920 Butternut Street Owner/Petitioner: Olson Group Network LLC, 2701 W. 45th Avenue, Gary, IN 46408
Vicinity: 13920 Butternut Street, Cedar Lake, IN 46303**

Mr. Bunge stated the next order of new business is for a Developmental Variance to allow the construction of a new residential house on an existing lot with a lot width of 70 feet and lot size of 5,971 to be 11.86 feet from the front property line, to be less than 30 feet from the rear property line, a reduction in the minimum garage size to approximately 226 square feet and a reduction in total house square footage to 1,472 square feet.

Ms. Abernathy stated there was nobody present, but the recommendation is to defer. She has not received any communication from them or received any Proofs of Publication that this was properly advertised.

A motion was made by Mr. Parker to defer this item to the next Public Hearing and seconded by Mr. Kiepura. Motion passed unanimously by roll-call vote:

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

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**2. 2023-12 – Straight A Builders, Inc. – Developmental Variance – 13309 Sherman Street
Petitioner: Straight A Builders, Inc., 13731 Deodor St, Cedar Lake, IN 46303
Vicinity: 13309 Sherman Street, Cedar Lake, IN 46303**

Mr. Bunge stated that the next order of business is a Petitioner requesting a Developmental Variance to allow the construction of an attached garage to be 2 feet from the property line. Mr. Austgen stated the legals are in order for Public Hearing.

Mr. Trent Vanderzee, Straight A Builders, Inc., stated his client would like to construct an attached a two-car garage to their home. The drainage runs steep to the north and there would be a small swale to take the water around from the south side and drain it across this property to the north.

Mr. Bunge asked if there were any remonstrators for this Variance or against this Variance. Seeing none; public comment is closed.

Mr. Bunge commented the 2 feet from the property line is excessive for the Board. We require a minimum of 8 feet.

Mr. Kiepura commented if they adhere to the Ordinances, he cannot build a two-car garage. Discussion ensued.

Mr. Parker asked if this was a pre-platted subdivision. Ms. Abernathy commented this in one of the old Shades divisions. Discussion ensued.

Ms. Abernathy commented we reviewed this at our weekly department meeting and the building to the south is 18 feet from the property line and they are maintaining that they put setback on the north side. They were ok with that because that would still allow for emergency vehicles to get through if needed. There would not be a potential of being too close to the neighbor's property by going to that 2-feet because it is about 18 feet to the property line to the house to the south.

Mr. Jackson asked if they can narrow down the garage. Mr. Vanderzee commented 3-feet from property line may work. Mr. Kiepura commented he would like to see 5-feet. Lengthy Discussion ensued regarding how many feet will work from property line.

A motion was made by Mr. Kiepura to grant the Developmental Variance to allow the construction of an attached garage to be 5-feet from the property line per Findings of Fact and seconded by Mr. Parker. Motion passed unanimously by roll-call vote:

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

**3. 2023-13 L & L Capital Assets LLC – Developmental Variance – 13310 W 133rd Ave
Owner/Petitioner: L & L Capital Assets LLC, PO Box 2010, Cedar Lake, IN 46303
Vicinity: 13310 W 133rd Ave, Cedar Lake, IN 46303**

Mr. Bunge stated that the Petitioner is requesting a Developmental Variance for Lot 1 to allow for a reduction in the rear yard setback to 20 feet off of 133rd Avenue and 8 feet off of 133rd Drive to reduce the lot size to 12,500 square feet, and a reduction in the lot width to 80 feet on a proposed corner lot in an R-1 Zoning District. For Lot 2, Petitioner is requesting a Developmental Variance to allow for a reduction in the rear yard setback to 20 feet, a reduction in the side yard setback to 8 feet, to reduce the lot size to 12,000 square feet, and a reduction in the lot width to 75 feet on a proposed interior lot in an R-1 Zoning District. Mr. Austgen stated the legals are in order.

Mr. Jack Huls, DVG, stated this petition is also in front of the Plan Commission for a two-lot re-subdivision. This was in front of the BZA about a year ago for a one-lot subdivision and it is recorded as a one-lot subdivision. The previous owner received Variances on where to place the house on that property. Since then, construction was started and stopped and the property has been sold. Being a two-lot subdivision, the property is currently zoned R-1 and there was talk about an R-2 use to allow two single family homes on this property and it was favorable. We would like to do two single family homes. If we changed it to a R-2, there would be less Variances, but we would still have Variances. We would like to leave the zone the way it is as an R-1 zone and seek the Variances because it wouldn't be favorable to change the zone and then come to the Board of Zoning Appeals and ask for a Variance.

The request that we have would allow for two lots to be configured where Lot 1 would be on the north half and Lot 2 would be on the south half. Lot 1 is bigger because it has dual frontage on the north and east side and is narrower. The total length from north to south is about 160 feet. The lot width will be 75.5 and 80 feet and this would be one of the Variances. The lot coverage per the Ordinance states different sizes in the R-1 zone. We meet the R-2 zoning for both of those for this project in the previous application, there was consideration with the rear yard, because there is a partial structure on the property and we would like to utilize a portion of that for one of the homes.

We need to re-apply to allow that home to remain where it is at. There are three Findings of Fact that we need to prove that this will not be injurious to the public health or the welfare of the community. The previous subdivision was granted a number of waivers from the Plan Commission so there was no requirement for public improvements, curb, sidewalk or drainage. This Petitioner will install curb and gutter on the frontage along the lots which is about 300 millennial feet of curb and the same amount of sidewalk would be installed. This would be covered under a Performance Bond. This property will demonstrate it will not adversely affect the adjacent property owners around us. This is a vacant parcel and we are proposing a use that is similar to the homes that are there. The strict application to the terms of the Zoning Ordinance creates hardships for this property. This property on the west side is adjacent to the railroad tracks and creates a hardship for this property. That side of the property is high by about 20-

feet, so from the railroad tracks to the road in the front on the east side there's about 20-feet in grade change. Typically, when doing a subdivision, we would want the high side of the lot to be on the front so that we could have a nice look out to the backyard and we could have a walk-out basement. In this case, it is the opposite where you have to go upstairs to be on grade in the back and there would be a little berm in the backyard. On 133rd Avenue, about midway through the property is a low spot and there is a six-inch ductile iron pipe that goes from the west side of the road and drains to the east side and then goes down the hill towards the lake. That will be taken out and put at a proper elevation and there will be two drains installed with 12-inch pipe and we will put in a ditch in the public right-of-way across the street.

Mr. Jackson asked if these were legacy lots. Ms. Abernathy responded in the negative and stated the entire parcel is approximately an acre. Mr. Huls commented on the north side of this property, all of the parcels are zoned M-1 and the properties around us are zoned R-1 but the zoning code over the last years has changed and many of the lots are the same size as what we are asking for. There may be houses there, but at some point, in the future unless there is a zone change, there can be an industrial type use in that area.

Mr. Bunge asked if there were any remonstrators for or against this Variance. Seeing none; public comment is closed.

Ms. Abernathy stated the Town Engineer reviewed this and there are minor comments to the subdivision plat. If were to have been re-zoned, he would have met all of the R-2's lot widths and sizes for a corner lot. It is hard creating your own hardship, and if we rezoned to an R-2 and now we need all of these Variances to make it work it'd be creating their own hardship. They are working with the existing zoning so if the Board is going forward with any approvals tonight, the recommendation would be to make any motion contingent to Plan Commission approvals.

Discussion ensued regarding the different zoning near this property.

Mr. Bunge asked if the curb and drainage was going to go along the property line. Mr. Huls responded in the affirmative. Mr. Oliphant and I discussed how the drainage would work and it falls another 20 to 25 feet from there to the detention pond that is behind the storage place. We are going to lower the right-of-way a little so that it will drain. Discussion ensued.

Mr. Huls commented we have a written petition that was prepared on the multi-family, so that was the previous subdivision and all the adjacent property owners signed the petition that they agree with the multi-family which is not what our petition is, but it does show all the adjacent owners feel that doing something on that property is in favor.

A motion was made by Mr. Kiepora to grant the Petitioners request for the Developmental Variances to allow reduction in the rear yard setback to 20-feet off of 133rd Avenue and 8-feet off of 133rd Drive and to reduce the lot size to 12,500 square feet and a reduction in the lot width to 80 feet on a proposed corner lot in an R-1 Zoning District.

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For Lot 2, to grant the Petitioners Developmental Variance to allow for a reduction in the rear yard setback to 20 feet, a reduction in the side yard setback to 8 feet, to reduce the lot size to 12,000 square feet, and a reduction in the lot width to 75 feet on a proposed interior lot in an R-1 Zoning District per the Findings of Fact and seconded by Mr. Jackson. Motion passed unanimously by roll-call vote:

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

4. 2023-14 Vis – Developmental Variance – 11700 W 126th Avenue

Owner/Petitioner: Nathan Vis, 11700 W 126th Avenue, Cedar Lake, IN 46303

Vicinity: 11700 W 126th Avenue, Cedar Lake, IN 46303

Mr. Bunge stated that the next order of business is the Petitioner is requesting a Developmental Variance.

Ms. Abernathy stated this item is going to get deferred. Mr. Nathan Vis communicated to Ms. Abernathy that he forgot to properly send out his notices and they have not been publicly noticed.

A motion was made by Mr. Parker to defer this item to the July 13, 2023 meeting and seconded by Mr. Jackson. Motion passed unanimously by roll-call vote:

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

5. 2023-15 Torok – Developmental Variance – 8514 W 146th Avenue

Owner/Petitioner: Anita & Andrea Torok, 8510 W 146th Ave, Cedar Lake, IN 46303

Vicinity: 8514 W 146th Ave, Cedar Lake, IN 46303

Mr. Bunge stated that the next order of business is a Petitioner requesting a Developmental Variance to allow the construction of a 6-foot privacy fence in the front yard setback on a dead-end street. Mr. Austgen stated the legals are in order.

Ms. Anita Torok, 8510 W. 146th Avenue, stated she is requesting to build a 6-foot fence bordering the property at 8504 W. 146th Avenue and Pinecrest Harbor to align with the house to the front of the street. The current Zoning Law only allows for a 3-foot fence, but the fence will be located at a dead-end street in an isolated area facing the harbor. There are no other residences bordering the site. She would like this for safety, privacy and noise control. The land adjacent to

the proposed 6-foot fence is an open harbor which is part of a commercial property. There are no permanent residents living adjacent to that proposed site, but there is a small strip of land approximately 2-feet wide that borders the harbor. The new fence would be a white vinyl replacing an 8-foot chain link barbed wire fence and will add to the visual beauty to the entrance of the harbor.

Mr. Jackson asked if the current fence is Pinecrest Marina's. Ms. Torok stated it is on both of our properties.

Mr. Parker asked why are they here if they are changing fences. Ms. Abernathy stated they are changing it from a chain link fence to a 6-foot privacy fence. Discussion ensued.

Ms. Abernathy commented once something is removed, we consider as though it's never been built. If they would have removed the chain link fence prior to coming in front of the Board, it would have been as if the fence never existed. Having them leaving it up shows there has been a legal non-conforming use that been ongoing. It is just showing that they are asking to change and extend the use of the fence in that area.

Mr. Jackson asked what is the length of the fence in that area. Ms. Torok stated is about 20-feet from the house to the street. Ms. Abernathy commented the whole length is 122 feet according to the plat. Discussion ensued.

Mr. Bunge asked are you proposing the fence to go all the way from the end of 146th Street all the way down to the lakeshore. Ms. Torok responded in the affirmative. Discussion ensued.

Mr. Kiepura asked if this would affect anyone or any type of traffic flow. Ms. Torok stated it does not create any blind spots for cars, no curves or corners. It is a dead-end street and the house is at the end of the street. It will not hinder any view of any of the neighbors and the proposed fencing faces the harbor and no permanent residents live near this proposed site.

Mr. Parker asked if this is part of the Zoning Ordinance. Ms. Abernathy responded in the affirmative.

Mr. Bunge asked if there were remonstrators for or against this Variance. Seeing none; public comment is closed.

Ms. Abernathy commented everything is good with this and it is on a dead-end street that goes into the cove that leads to Pinecrest Marina and doesn't anticipate any future development on the other side as that would require a bridge to go across. Discussion ensued.

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A motion was made by Mr. Kiepura to approve this Developmental Variance to allow the construction of a 6-foot privacy fence in the front-yard setback on a dead-end street per the Findings of Facts and seconded by Mr. Parker. Motion passed unanimously by roll-call vote:

Mr. Parker Aye

Mr. Jackson Aye

Mr. Kiepura Aye

Mr. Bunge Aye

6. 2023-16 Kelly – Developmental Variance – 14703 Ivy Street

Owner/Petitioner: Richard Kelly, 14703 Ivy Street, Cedar Lake, IN 46303

Vicinity: 14703 Ivy Street, Cedar Lake, IN 46303

Mr. Bunge stated that the Petitioner is requesting a Developmental Variance to allow the Petitioner to construct a 6-foot privacy fence on a corner lot served by sidewalks.

Ms. Abernathy stated they have received their Variance and do not need to be in front of the Board. This can be removed off of the agenda.

A motion was made by Mr. Parker to acknowledge that this item can be removed off of the agenda and seconded by Mr. Kiepura. Motion passed unanimously by roll-call vote:

Mr. Parker Aye

Mr. Jackson Aye

Mr. Kiepura Aye

Mr. Bunge Aye

PUBLIC COMMENT:

Ms. Gayle Brannon, 7014 W. 139th Place, commented that Ms. Abernathy stated they weren't able to get to the minutes from the last meeting, but there are no meeting minutes on the website from the last three meetings and was wondering when those would be available to the public. Ms. Abernathy commented we can get this rectified for the March and April meeting minutes.

Mr. Jerry Wilkening, 10826 W. 131st Avenue, commented that NYBY was talked about in the past and he kept hearing that it was approved. Was that a 2-2 vote. Ms. Abernathy stated the first vote was a 3-1 in favor and that was at the June meeting. The July meeting had been a 2-2 vote which resulted to the deferral to the August meeting and at that meeting it was a 3-2 vote. Mr. Wilkening commented this is vacant property and doesn't understand what the hardship is. When this was originally discussed there were a lot of (inaudible) hours of operation. Comparing this property with similar business is not apples for apples. Does anyone think that unloading cars in the center turn lane for this business is a good idea, because driving a flat bed truck into that parking lot and trying to off load vehicles is going to be complicated. Discussion ensued

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regarding deliveries to other businesses in the area. Mr. Wilkening stated there are a lot of details and he is asking they get in writing from this business. It is not about what it is now, it is about what it could be later. There is no turning lane, no parking along 133rd Avenue. There is no hardship and Mr. Parker commented he does not disagree with any of this.

ADJOURNMENT: Mr. Bunge adjourned the meeting at 7:55 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.

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