

**MINUTES OF THE REGULAR MEETING OF THE
BOARD OF ZONING APPEALS
TUESDAY, August 11, 2009**

The Michigan City Board of Zoning appeals met in a regular meeting in the Common Council Chambers, City Hall Building, 100 East Michigan Boulevard, Michigan City, Indiana, on *Tuesday, August 11, 2009*, at the time, date and location for holding of said meeting.

A pre-meeting was held by the Board at 6:30 p.m. in the Mayor's Conference Room, West, first floor, City Hall Offices.

Board President Przybylinski called the meeting to order, and upon roll call, the following answered present:

Don Przybylinski, Al Whitlow, and Tom Wilson; three board members present.

Also present: Steven A. Hale, Counsel for the BZA; Joe Slegel, Zoning Administrator; and, Marilyn M. Jones, court reporter.

Next was approval of the minutes from the July 14, 2009, meeting. Since Board Member Wilson was not present for the meeting on July 14, 2009, he abstained from approving the minutes. Approval of the July 14, 2009, meeting minutes was tabled until the next regularly scheduled meeting in September, 2009.

The first item of business:

President Przybylinski called for the first petition.

***Petition B-104-09* of Ray Cermak requesting a Development Standard Variance for construction of a 12-foot-wide-by-28-foot long screened porch addition with an open deck above to be located in a required rear yard at 1302 Lake Shore Drive. This petition was continued from the June meeting.**

Mr. Cermak approached the board (having submitted Power of Attorney and proofs of publication to Counsel Hale earlier) and explained his reasoning for planning the deck as large as it is; Board members asked questions regarding the size of the deck, setbacks and building of the home without the plan for the deck to begin with; also

asked if the deck would obscure views for neighbors. Encroachments were also discussed at length by the board with Mr. Cermak.

There being no further questions from the Board, public comment was called for.

Counsel Christopher Willoughby of Braje, Nelson & Janes approached the Board, explained that he is present to remonstrate against this request on behalf of property owner at 1306 Lake Shore Drive. Counsel Willoughby pointed out the provisions of the ordinance and the standards the Board would have to meet to be in compliance with the ordinance; asking the Board to reject the request for variance this evening.

There being no further public comment, public portion of the meeting was closed.

President Przybylinski called for departmental reports, which were read into the record, and are attached hereto, by Mr. Siegel. No written remonstrances were submitted.

President Przybylinski temporarily relinquished his position as president of board to Tom Wilson, and proceeds to make commentary about his opinion, after visiting the site, of the petition, suggesting that the deck be scaled back to 12 feet or less. Discussion ensued regarding setbacks and distances. Mr. Przybylinski suggested that Mr. Cermak amend his request wherein he would request a 12-foot deck.

Acting President Wilson relinquished the position of president back to Mr. Przybylinski, who then took control of the meeting.

Mr. Cermak noted that he feels asking for 12-foot amendment would be unfair to his customer, the property owner.

Counsel Willoughby asked for a point of order and requested clarity.

Board Member Whitlow asked to make his comments before Mr. Willoughby continued, noting that he feels it would be prudent of Mr. Cermak to consider requesting that his petition be tabled, to be heard at the next meeting when there is a full board present, and to take into

consideration the things he has heard tonight and that he come back with a few amendments to the petition.

Mr. Cermak requested that his petition be continued until the September, 2009, meeting; said request granted by the board.

The next petition called was:

***Petition B-102-09* of William A. Roberts requesting a Development Standard Variance for construction of an elevated deck off the rear of a new residence under construction at 1602 Lake Shore Drive; Counsel Ralph Howes.**

Counsel Howes, Mr. Roberts and Mr. Feikes approached the Board. The project was explained to the Board by Counsel Howes, along with demonstrative plats, aerial IGS schematics and “artist’s renderings”. Footprint of the building and the deck was discussed in length. Decking of composite material was discussed, and that the deck is not to be enclosed.

Board members asked questions. Counsel Hale also advised that since there are only three board members present for the meeting tonight that it would take all three votes to pass the petition. Counsel Howes acknowledged this fact, and expressed his desire to continue with the process with only three board members present.

Mr. Wilson asked about any other possible way to situate the house and deck. Mr. Feikes expressed the fact that the lots are 40-foot-wide lots, and that the zoning laws call for 50-foot-wide lots, it becomes difficult to build a decent-sized house on the lot. Mr. Wilson noted that the board is very familiar with the lots in this area of the city, and the issues that the lot owners face.

There being no further questions from the board, public portion of the meeting was opened.

There being no public comment, public portion of the meeting was closed.

Mr. Siegel read departmental reports into the record, which are attached hereto.

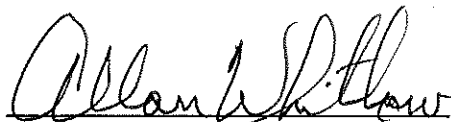
Further comments from the board were made. President Przybylinski called for the motion.

It was moved by Mr. Wilson that Petition B-102-9 be approved, seconded by Mr. Whitlow.

With a voice vote of all “ayes” and no nays, *Petition B-102-09* was approved.

The next item on the agenda was old business. There being no old business, the next item on the agenda was new business. No new business.

There being no further business to come before the board, the meeting was adjourned.


Board Secretary

Petition No. B-104-09
Ray Cermak
Attorney's Observations

MARILEN

It should be noted that the Petitioner is not the owner of the property. The owners of the property are Mike and Mary Noonan. The Petitioner, Ray Cermak, does not identify his interest in the property; it is assumed he is the builder. Petitioner will need to provide the BZA with a power of attorney or otherwise demonstrate that he has the authority to act on behalf of the owners and/or persons having a substantial interest in the property.

Petitioner has adequately satisfied the requirements for public notice by newspaper publication and for notice to adjoining owners.

Petitioner is seeking a development standard variance from the requirements of Section 160.044(E)(1)(c) of the Zoning Ordinance. Petitioner is seeking to add a screen porch (with a deck on top) to the rear of the property, encroaching upon the required rear yard set back of 30 feet in an R-2 district.

The standards for a development standard variance are found in Section 160.124(B)(4)(q) of the Zoning Ordinance:

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and,
- (3) The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

It may be helpful to have the Petitioners adequately address:

1. How recently the property was built and why it was not practical to design the porch and deck at that time.
2. The extent to which neighboring property owners will have their view, light or use effected.
3. The extent to which neighboring properties have also encroached onto the required rear yard.

**REPORT ON THE PETITION OF
RAY CERMAK B-104-09**

WATER DEPARTMENT: R. E. Russell, Superintendent, had no objections.

SANITATION DEPARTMENT: Al Walus, General Manager, had no objections.

PLANNING DEPARTMENT: The Petitioner is requesting a Development Standard Variance for construction of a 12' wide x 28' long screen porch addition with an open deck above to be located in a required rear yard.

Board members will note that Chapter 160.044(E)(1)(c) of the Michigan City Comprehensive Zoning Ordinance requires a 30' rear yard setback in the R-2 district.

Further, that item 3 of the preliminary finding and order requires the Petitioner to demonstrate that "the strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property".

The Departments' review would indicate that the proposed structure appears excessive in scale and would suggest that Board members consider discussing with the Petitioner the possibility of amending the petition to allow for a porch/deck structure of smaller proportion and in line with the porch/deck on the house to the east (9' to 12')±.

The Department would recommend approval subject to an amended petition.

Note to Board members: With a relatively new home built, the contractor/developer had every opportunity to incorporate a screen porch/deck into the original building volume envelope with respect to setbacks.

MARILYN

Petition No. B-102-09
William A. Roberts
1602 Lake Shore Drive
Attorney's Observations

Petitioner is seeking a development standard variance from the requirements of Section 160.044(E)(1)(c) of the Zoning Ordinance. Petitioner is seeking to add an elevated deck to the rear of the property, encroaching upon the required rear yard set back of 30 feet in an R-2 district.

The standards for a development standard variance are found in Section 160.124(B)(4)(q) of the Zoning Ordinance:

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and,
- (3) The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

It may be helpful to have the Petitioners adequately address:

1. The extent to which neighboring properties have also encroached onto the required rear yard with decks or other, similar structures.
2. The extent to which neighboring property owners will have their view, light or use effected.
3. Because the property is currently being built, why it was not practical to design the deck to comply with the set back.
4. The extent to which the area under the deck will remain unenclosed.

**MICHIGAN CITY BOARD OF ZONING APPEALS
FINDINGS AND ORDERS – DEVELOPMENT STANDARD VARIANCE**

The application of **William A Roberts**

Public Hearing on Findings and Decision held the **11th day of August, 2009**

Public Hearing on Findings and Decision closed the **11th day of August, 2009**

Findings and Orders Determined the **8th day of September, 2009**

WE THE MEMBERS OF THE MICHIGAN CITY BOARD OF ZONING APPEALS NOW FIND:

1. That the Petitioner/property owner is William A Roberts.
2. That the Petitioner is requesting a Development Standard Variance for the construction of an elevated deck to the rear of the residence (presently under construction) at 1602 Lake Shore Drive.
3. That the proposed deck will project 12 feet into a required 30' rear yard.
4. That Petitioner requires relief from Section 160.044(E)(1)(c) of the Michigan City Comprehensive Zoning Ordinance.
5. That Petitioner submitted the following exhibits to the Board.
 - a. Survey of lot showing yard encroachments of previous house which has been razed to allow for construction of new residence.
 - b. Aerial photograph showing yard encroachments of other properties within the same block as Petitioners' residence.
 - c. Rendering of Petitioners' finished residence (depicting deck structure).

FURTHER, that preliminary findings as required for Development Standard Variance approval were submitted by petitioner, and after review and discussion by the Board, a final determination is as follows:

- a) **That the Development Standard Variance requested in the petition would not be injurious to the public health, safety, morals, and general welfare of the community.** The extent of the requested variance (12 feet or less in depth) is consistent with a majority of homes in the area, which have not shown any adverse impact to public health, safety, morals, or general welfare of the community.
- b) **That the Development Standard Variance requested in the petition would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner.** Given the location of the property and the neighboring properties, the proposed deck will have minimal or no effect on the view, light or use of neighboring properties. The view, available light and use of

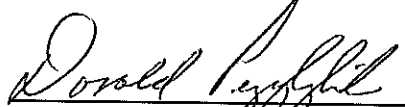
neighboring properties will be improved as a result of demolishing the previously existing home and proceeding with the proposed deck. The extent of the requested variance (12 feet or less in depth) is consistent with a majority of homes in the neighborhood, which have not shown any adverse impact to public health, safety, morals, or general welfare of the neighborhood.

- c) **That the Development Standard Variance requested in the petition, would by the strict application of the terms of the Zoning Ordinance, result in practical difficulties in the use of the property.** The platted lot is smaller than current standards, which makes new construction more difficult.

The proposed new home and deck replace a previous home which has been razed to allow for the proposed home and deck; the proposed new home and deck project far less into the required rear yard and therefore the proposed rear deck represents a substantial improvement and a very significant increase in the rear yard that remains open and free of structures.

The BOARD NOW DECIDES that Petition B-102-09, BE AND IS HEREBY GRANTED based on the above listed findings.

Approved this 11th day of August 2009, after proper notice and public hearing.



Donald Przybyliński, President

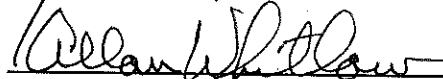


Tom Wilson, Vice-President

G. Wallace Hook, Member



John P. Morse, Member



Al Whitlow, Member