



# CICERO / JACKSON TOWNSHIP BZA MEETING

BZA Meeting Minutes  
December 22, 2016  
7:00 p.m.

## Roll Call of Members

Present:

- Brad Baker – Chairman-present
- Tom Warner –present
- Art Hall-present
- Dan Strong-present as Interim Plan Director
- David Martin-present
- Mike Berry-present
- Aaron Culp - Legal Counsel-present
- Terri Strong - Recorder

1. Declaration of Quorum- Declared quorum with five members.
2. Approval of Minutes-. **Motion was made by Mr. Martin to approve all minutes that were emailed, from August 2015 to October 2016. Second by Mr. Berry. All present in favor.**
3. Old Business- None

### 4. New Business

**Docket #: BZA-1116-021-R-3**

**Petitioner: Ella J. Fox, Trustee of the Ella J. Fox Revocable Trust c/o James Yott POA (POA on File)**

**Property Address: 1140 Shoreline Drive (vacant lot)**

**Cicero, IN 46034**

**Development Standard Variance: To allow for a reduction in front yard setback to 25 ft., and to allow side yard setback reduction to 6 ft. whereas ordinance states front yard setback to be minimum of 30 ft. and side yard setback minimum of 15 ft.**

President Baker requested petitioner or representative to present to the Board.

Mr. James Yott, 155 Greyhound Pass, Carmel, IN acting as POA for Miss Fox. Mr. Yott stated he has a PO agreement with Miss Fox concerning the property subject to variance request approval.

Mr. Strong stated the POA, all legal notices and certification receipts were on file.

Mr. Yott stated the intent for the property to build a single family home in the small town environment offered by Cicero. Plan to build a 2000 sq. ft. ranch on the lot with walk out basement, typical of the Cicero Shores neighborhood. Requests are the same as found in the Declaration and restrictions for Cicero Shores. Request is typical of the neighborhood, provided map with pictures. The lot is only 75ft wide. Mr. Hall questioned a previous situation. Mr. Culp commented that in this case the covenant is less restrictive than the



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ordinance. Mr. Yott discussed property values for area properties that have similar setbacks as he is requesting. Stating not a detriment to the values.

Mr. Hall asked when the original area was developed and if it was known what zoning board was in effect. Mr. Strong stated most were built in the 1970's, and according to a very old map there was not a R1, 2 or 3, only a residential zoning classification. Mr. Hall asked if there was requirements then. Mr. Strong stated 9000 sq. ft. Mr. Hall stated if there was a zoning requirement at that time, it seems that would be what they needed to follow. Mr. Culp stated passing the current ordinance means this has to be a variance to the current ordinance. Mr. Yott stated that when R-3 was enacted, all homes that he pointed out would not meet the current ordinance requirements for setbacks.

Mr. Berry questioned the size of the home. Mr. Strong stated the documents are not the exact footprint, however felt necessary to show a rendering of what the lot would look like with setback requests.

Mr. Warner commented the homes/lots in the area on the sides are legal non-conforming, but what about the front. There was discussion and gestures to the map/photos and survey stakes. Question was posed concerning the utility easement in the area. Mr. Warner questioned where the actual property line starts and compared to the other homes in the area where the setback would start, the concern was on the front of the property.

**Mr. Martin made motion to open public hearing. Mr. Warner second. All present in favor. Public hearing open.**

Keith Clock property owner immediately to the north of property in question, 1120 Shoreline Dr., a resident for 30 years in this home, with each neighboring owner, has shared maintenance of the empty lot. Concerns are: information received doesn't say which side yard setback was being requested, on our side property line stake, northeast corner stake is different than metal stake placed a few years ago, approximately 2 foot closer to his home. If stake is wrong, can impact his side on the setback. Second: there is a drainage gully that was fixed by a drainage swell, development could adversely affect the water run off to his property from a drainage perspective. Concern would be to insure no affect to our property.

Mr. Strong responded that the setback request is for both sides. Also that the drainage concern would have to be worked so did not affect Mr. Clock's property. It would have to be addressed as whether it is a drainage swell or any other issue.

Mr. Culp stated that the stake issue would be a matter for circuit court if there is a dispute and there is a process for this. If survey stake is located and written survey is different, could be reviewed with the circuit court.

**Mr. Martin made motion to close public hearing. Mr. Warner second. All present in favor. Hearing closed.**

Mr. Warner asked if there was an issue with moving back closer to the lake. Mr. Yott stated it could impact the swell or drainage, and concern with hill on the back. Stated costs on walls could be adverse. Further west they push it, the greater the issues for placement. Mr. Strong reminded the board that Cinergy Group has 20ft easement on the back of all properties. Mr. Warner continues to be concerned with the drainage and we don't have answers here tonight. Concern also with possible survey dispute should we make determination.



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Mr. Culp stated the board has to go by the survey that is in evidence. Mr. Culp stated that the drainage would go to the approval process before the drainage board and Mr. Comer for approval. President Baker stated that it was a legal lot, there is plenty of room to build an 1800 sq. ft. building. Mr. Berry questioned if the lot was off 1-2 ft. on north side, would it be also off on the 1-2 ft. on the south. Mr. Culp answer not necessarily many options. Mr. Berry would you still have a potential drainage issue if the setbacks are not approved. Mr. Yott answered swell is there and will have to be dealt with one way or another. Any builder that has looked at the lot has expressed the swell will need to be addressed and the setbacks can affect the severity. Variance gives the ability to have a better solution, similar to others in the neighborhood.

Mr. Hall asked if law protects one property owner from the other regarding water drainage, etc. Mr. Culp stated yes, a property owner cannot build or install to cause drainage to adjacent property.

**Mr. Martin made motion to approve Docket BZA 1116-021-R3. Mr. Berry second.**

Mr. Strong stated the lot is not 1140 Shoreline Dr. it is approximate, as it has not been addressed as of yet. President Baker asked who is doing the addressing. Mr. Strong stated Plan Commission office with assistance from Cicero Fire Dept.

**President Baker called for vote:**

**Mr. Martin-yes Mr. Hall-yes, Mr. Baker-yes, Mr. Berry-yes. Mr. Warner-no. Motion approved 4-1 vote.**

President Baker stated there are six petitions regarding the next property. The process would be to discuss all petitions at once and then vote each one separately. Mr. Strong stated there were points of clarification. The points are as follows: The report states that Pierce owns the property to the south which they do not, Bullseye's own the property, under adjacent property, page 2 of materials handed out.

**Docket#: BZA-1016-20-C4**

**Petitioner: GW Pierce Enterprises LLC/GW Pierce Auto Parts, Inc.**

**David Kingen and Justin Kingen (consent form on file)**

**Property Address: 22265 US 31 North  
Cicero, IN 46034**

**Special Exception:** To allow for the operation of an automobile/truck storage (outdoor) to be located in a "C4" Zoning District whereas automobile/truck storage (outdoor) is not a permitted use.

**Docket#: BZA-1216-022-C4**

**Petitioner: GW Pierce Enterprises LLC/GW Pierce Auto Parts, Inc.**

**David Kingen and Justin Kingen (consent form on file)**

**Property Address: 22265 US 31 North  
Cicero, IN 46034**

**Development Standards Variance:** To allow for a reduction in the side yard setback to 5 feet from the property line on the north side whereas the required side yard setback is 30 feet in the C4 Zoning District.

**Docket#: BZA-1216-023-C4**

**Petitioner: GW Pierce Enterprises LLC/GW Pierce Auto Parts, Inc.**

**David Kingen and Justin Kingen (consent form on file)**

**150 W. JACKSON ST. P.O. Box 650 CICERO, IN 46034  
PHONE: 317-984-5845 FAX: 317-984-5938 WWW.CICEROIN.ORG**



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**Property Address: 22265 US 31 North  
Cicero, IN 46034**

**Development Standards Variance:** To allow for a minimum in the rear yard setback on the east side of 5 feet whereas the ordinance allows for a minimum rear yard setback of 30 feet in the C4 Zoning District.

**Docket#: BZA-1216-024-C4**

**Petitioner: GW Pierce Enterprises LLC/GW Pierce Auto Parts, Inc.  
David Kingen and Justin Kingen (consent form on file)**

**Property Address: 22265 US 31 North  
Cicero, IN 46034**

**Development Standards Variance:** To allow a monument/pylon sign at a height of not to exceed 20 feet whereas the ordinance states a maximum of 6 feet above ground in a C4 Zoning District.

**Docket#: BZA-1216-025-C4**

**Petitioner: GW Pierce Enterprises LLC/GW Pierce Auto Parts, Inc.  
David Kingen and Justin Kingen (consent form on file)**

**Property Address: 22265 US 31 North  
Cicero, IN 46034**

**Use Variance:** To allow for a retail facility to sell motorized equipment in a C4 Zoning District whereas a retail facility to sell motorized equipment is not a permitted or special exception use in the C4 Zoning District.

**Docket#: BZA-1216-026-C4**

**Petitioner: GW Pierce Enterprises LLC/GW Pierce Auto Parts, Inc.  
David Kingen and Justin Kingen (consent form on file)**

**Property Address: 22265 US 31 North  
Cicero, IN 46034**

**Development Standards Variance:** To allow the southern portion of the front parking lot, maneuvering area and display area to remain stone whereas the ordinance states: All parking lots for commercial, industrial, business, public and private employee parking, offices, organizations, and places of assembly must be paved with asphalt, concrete, or other durable material.

President Baker read all the dockets as listed above. Invited petitioner to speak.

Mr. Strong stated POA present to represent petitioner, all legal notices and certifications and green cards are in order.

David Kingen, Urban Planner at 6180 Market St. Indianapolis, representing Todd Case client, Indiana Recovery Services, presently on 8280 E 216<sup>th</sup> St. Presented handouts to the Board. Mr. Strong stated this was allowed after packets were sent to board. One is the position of the sign as well as a rendering of the sign if a monument sign.

This is request to relocate the business to the 22265 US 31 North location.



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First handout shows how property would be redeveloped with the large gray building and addition to the building which would be joined by a breezeway allowing trucks inside for repair. Also present is representative from Miller Survey and Justin Kingen to be able to answer questions the board may have.

Mr. Kingen stated he sees the exceptions and variances a significant improvement on the property as it is today. This is a repair facility not a place where vehicles will be sitting in disrepair. Other issue to present is the significant improvement to the existing lot. Are asking for south part to remain gravel, but not to be used for customer and employee parking but for use for display of trailers and vehicles for sale.

Reductions on north and east easement, there is a privacy fence, it is Mr. Case's desire to have a similar privacy fencing on the south side. Land on the other side of the privacy is zoned C4. Buffer fence would separate the industrial zoning.

The next request for signage is not for the Indiana Recovery Services but for the future for retail options. Has suggested 20 ft. to the board due to US 31, the 6ft signage allowed hinders visibility by fencing and traffic speeds.

The third request is the one for selling trucks and vehicles, while not planned for early 2017 but for the future. Lastly, the area to remain in stone, it is not an area for traveling, but for display.

Expected daytime operations 6-12 people in and out of business. Stated the current location is closer to residential and feel that this is a better location overall for the industrial type of operation.

The other two attachments are the aerial, only lot one of the southeast part of property is being affected. Will answer any questions you may have.

President Baker asked for clarification on lot, document is labeled lot two. Lot two is correct.

Mr. Martin asked the origin of the towed vehicles and the duration on the lot.

Mr. Kingen stated operable cars, could be towed from apartment complex, shopping parking lots, unauthorized parking. Could be contacted via internet. Duration is 10-15 days average.

Mr. Warner are they abandoned repossessed vehicles, are they from accidents. Mr. Kingen stated didn't believe so.

Mr. Martin asked for clarification on retail trucks and trailers are they semi's. Mr. Kingen answered description was tractor that could haul, not semi, has been contacted by a franchise interested in area. Mr. Case skeptical about presenting as it is early in the process.

Mr. Martin asked if retail in the future would paving in the front help or hurt the business.

Mr. Kingen stated if board is insistent, we would look at, activity will be so little, this is not like a car lot where lots of traffic but similar situations have applied product to keep dust free. Mr. Case has not authorized him to agree to that however felt would agree.

Mr. Hall asked about setbacks, the existing fence line on north side is it 5ft back from property line. It is the property he is acquiring the fence would be 5ft from the vehicles, fence is on the property line. Off 5 ft. front for safety of the vehicles.

25-30% of the lot not being used. Mr. Strong stated it is an "L" shape.

Mr. Hall stated another variance on that piece. Mr. Kingen stated no only on the main, then showed the board on the maps. Further discussion.

Nathan Althouse with Miller Survey clarified the lot is being discussed not the fence line.

East side of lot, potential parking. Mr. Hall stated that would be an additional variance. Discussion as related to the map ensued. Mr. Hall asked for clarification that the rear set back doesn't affect the current project.



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Mr. Kingen stated that was correct. Mr. Martin asked if approved when would project take place. Mr. Kingen closing would occur first quarter of 2017.

Mr. Berry questioned the stone lot, again, not following the logic of not paving stone lot surrounded by asphalt. Mr. Kingen agreed that would not be logical of paved, then gravel then paved, but would like to maintain area of display as gravel as an option as the retail is not 100%. Mr. Kingen would agree that connecting the two areas should be agreeable to Mr. Case. Further discussion on the site plans ensued. Amended site plan could be filed, per Mr. Kingen. Mr. Warner stated the area behind the existing building appears to be grass area not stone. Mr. Strong clarified was is it existing stone. Mr. Kingen stated it was a mixture due to grass and weeds but was existing stone, could have been several years ago. Area has not been maintained. Mr. Strong stated board has latitude to make those conditions.

Mr. Strong stated that reaching out to Drainage Board, they are ok with proposed buildings, and any further requirements for paving would have to go before the Board for approval. Mr. Strong stated he would recommend any additions to paving be contingent upon Drainage Board approval. The planned buildings are approved by the Drainage Board, just any changes to the proposed plan would need approval.

Mr. Warner how does it fit into the long term planning in that area. Mr. Strong stated it is C4 in that area, so it would be a not be a permitted use or special exception and therefore entirely up to the board to make decision on what they would like to see on this property. Mr. Hall questioned does the Comp plan identify use for that area. Mr. Strong stated Comp Plan speaks to mostly commercial with property to south being C3.

Mr. Martin questioned the drawings appears to be landscaping. Mr. Kingen stated along frontage, year round green shrubs. Mr. Strong stated they are aware of the landscaping requirements around signage. Mr. Kingen stated it was reflected on the site plan as well.

Mr. Martin questioned the privacy fence will it be on the front as well. Mr. Kingen stated exists on north and east side, and installing on the south side, it is metal with solid inserts 7-8 feet tall.

President Baker stated board will address each docket individually for vote, but comments and public comments would be as one.

**Mr. Warner made motion to open public hearing for all listed dockets for property. Mr. Martin second. All present in favor. Public hearing now open.**

John Hayes 22350 E. 226<sup>th</sup> to the north of this property. First time of seeing the drawings, however have question on the east side setback why moving closer to property line. Also the existing fence line to the east would be on the property line. Discussion at table with map. Mr. Warner asked if relieve concern based on discussion with map. Mr. Hayes stated yes.

Doug(?) 1820 e. 226<sup>th</sup> street. Part owner and operator of Jackson Township ice skating rink, always concerned with drainage. Speaking for a couple neighbors, water from that area continues to be a concern for the area. Mr. Doug in favor of stone versus blacktop based on past experience. Secondly, lighting is a concern, opposed to lighting in that area. Signage lighting also on 31. President Baker will address concern when public hearing is done. Mr. Doug emphasized the drainage again when area 12 in drain gets clogged, comes across the road, to his property and the next two properties. Hopes the drainage. Mr. Strong asked if goes to the Isaac Jones drain, watershed. Mr. Doug stated that is the question it has been an issue since the recycling center opened. President Baker asked Mr. Strong about the drain path. Mr. Strong stated he knew the watershed was protected, believed it was the Isaac Jones drain and was subdivided in the area but did not know if it went to





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216<sup>th</sup>. Mr. Strong stated the board might want to attach to this as well for the Drainage Board to review further.

**Mr. Warner made motion to close public hearing. Mr. Berry seconded. All present in favor. Public hearing closed.**

President Baker informed Board to proceed with each request from this point on, addressing each one individually with further questions and motions starting with:

BZA-1016-20-C4 Special Exception.

Mr. Warner would like to add stipulation for no wrecked vehicles and all in working order. Mr. Culp suggested no inoperable vehicles. Mr. Martin asked what control the board has over weeds and general maintenance. Mr. Strong stated could be addressed as overgrowth. Mr. Strong also stated Use the verbiage could be running and operating motorized vehicles. Mr. Warner do we need to address items like lighting and hours on each one. President Baker stated for clarity be specific to the variance if applies attach it to each one. Mr. Hall stated there was zoning regulations on lighting, do we have to address it. Mr. Strong said could state abide by current zoning regulations, however could add restrictions on number if board desires as an example. President Baker asked Mr. Kingen if stipulation on that it is operational vehicles would that be workable for the business. Mr. Kingen stated yes.

Mr. Warner asked what lighting was being proposed. Mr. Kingen stated Mr. Case is planning on only have box lights on back of new building, does feel need for some lights for security purposes. They would be agreeable to adding shields on detached lights so lighting does not go over property lines etc. President Baker confirmed with Mr. Strong that the current guidelines covered parking lot lighting pollution. Mr. Strong stated yes.

Mr. Martin concern for how impact drainage. Mr. Strong felt Drainage Board should review plans after plan is finalized. President Baker stated drainage board could require on site retaining if there was an issue as well.

Mr. Warner asked if should be addressing operating hours. Mr. Hall stated yes to prevent towing at 3:00am Mr. Warner asked if 7 am to 8 pm would not adversely affect business. President Baker asked if landscape requirements required screening as part of ordinance from highway specifically. Mr. Strong stated do not for screening from highway. Mr. Kingen stated not by species but in where and by number. Mr. Strong stated Board could add to or deduct if needed. Further discussion by board members on wording of stipulations.

**Mr. Martin made motion to approve BZA 1016-20-C4 with the following conditions: restricted to only operable vehicles allowed on lots, conform to zoning restrictions on lighting, receive final drainage approval with final plan, operating hours of 7am to 8pm, and landscaping as currently proposed. Mr. Hall second. Roll Vote: Mr. Hall-yes, Mr. Martin-yes, Mr. Baker-yes, Mr. Warner-yes, and Mr. Berry-yes. Approved.**

Mr. Strong addressed the sequencing in the docket numbers. Original request was in October, further variances applied for after other numbers were assigned.

**BZA-1216-022-C4** President Baker pointed out this one is the north property line where Pierce currently owns. Mr. Strong stated since the drainage was attached to the final plan, it would cover these additional variances. President Baker asked for specific reason for this specific request. Mr. Kingen stated both north and east sides don't see reason for set back of 30ft within the fence before cars can be parked for storage. Does not affect placement of the building. Discussion on parking as well as storage, no future building.



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**Mr. Warner made motion to approve BZA 1216-022-C4 motion to approve with following conditions: set back is for storage and parking of operable vehicles not for construction of building. Mr. Martin second. Mr. Warner-yes, Mr. Martin-yes, Mr. Berry-yes, Mr. Hall-yes, Mr. Baker-yes. Motion approved 5-0.**

**BZA 1216-023-C4** Mr. Hall verified that public that spoke was resolved. President Baker reminded everyone that Pierce property wrapped this property. Mr. Warner stated again, the intent was not to park vehicles. Verified by Mr. Kingen. Discussion amongst board on this matter.

**Motion to approve BZA 1216-023-C4 made by Mr. Warner with following conditions: set back is for storage and parking of operable vehicles not for construction of building. Mr. Martin second.**

**Mr. Berry-yes, Mr. Baker-yes, Mr. Warner, Mr. Hall-yes, Mr. Martin-yes Motion passed.**

Mr. Martin asked question of Mr. Culp if could still add condition to the first motion that use stays with owner/property. Mr. Culp stated since still in meeting could modify. Mr. Strong explained the reason to petitioner. Discussion ensued. Mr. Culp stated based on restrictions placed and current ordinances boards concerns were covered.

**BZA 1216-024-C4** President Baker stated he understood concerns and understood petitioner would accept less than 20 ft. on requested sign. Mr. Kingen stated current sign would be removed and visibility would expect need for 12-16 feet minimum for new sign. Mr. Hall asked for reference the size of Pierce's sign. Concern expressed for residential in area. Mr. Strong stated for reference the closest would be McClure sign and Speedway on 31. Mr. Warner asked if sign was lit. Mr. Kingen stated not that far in design. Mr. Strong recommended sign to be internally lit, for safety reasons with spot lights getting out of adjustment. Mr. Berry asked when would be lit, during business hours. Mr. Kingen stated not determined, others in area are 24 hours. Discussion amongst board on size. Mr. Hall referred to zoning regulations on signage and candle power.

**Mr. Hall made motion to approve BZA1216-024-C4 with the following conditions: sign is internally lit and any existing freestanding signs are removed. Mr. Warner second.**

**Mr. Baker-yes Mr. Warner-no (height) Mr. Berry-yes, Mr. Martin-yes Mr. Hall-yes Motion approved 4-1.**

**BZA 1216-025-C4** Mr. Warner asked for clarification on definition of motorized vehicles. Mr. Kingen stated not a semi, long flatbed truck. Mr. Case has said trucks and trailers but not semi. Mr. Martin questioned is it possible he will not run the business. Mr. Kingen stated that was correct and couldn't give more specifics on vehicles. Mr. Hall stated need specifics and believes he (Mr. Case) needs to come before the board when he decides what he will be doing exactly with the building. Discussion on whether to table or reject via motion. Mr. Culp stated if rejected he has to wait 12 months.

**Mr. Warner made motion BZA1216-025-C4 is tabled for period to not exceed 90 days. Mr. Berry second. All present in favor.**

Mr. Culp clarified this means it will be on agenda next month then tabled if needed, staying on agenda prevents need for refiling. Discussion on dates. Motion stays as listed above.

**BZA 1216-026-C4** President Baker stated his view was that it goes with the previous variance exception is the pavement to pavement. Discussion ensued. Mr. Culp advised with questions it makes sense to be tabled without knowing what is going to happen with the business.





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**Mr. Hall made motion that BZA 1216-026-C4 to be tabled not to exceed 90 days. Mr. Martin second. All present in favor. Tabled.**

**President Baker thanked the petitioners for their patience and professionalism.**

5. Election of Officers for 2017: President Baker stated he doesn't want to be president but does want to stay on the board. Mr. Culp stated elections must take place in January.

President Baker stated appreciate being president but feels strongly that others should be allowed opportunity and take their turn will do it again, however term limits. Mr. Warner concerned 90 days is 91 days, can be fixed at February meeting. Mr. Warner stated new job entails extensive traveling and while doesn't want to leave board is concerned for having a leadership position that would be vacant ½ the time. President Baker asked Mr. Berry about accepting either office, who felt needed more experience. Mr. Martin stated yes but would prefer not president. President Baker stated would rescind his refusal to accept the nomination.

6. Plan Director's Report: none

7. Chairman's Report: Asked the number of applicants for position of Plan Director. Answered 3 possibly 4 and it had been 5 weeks.

8. Legal Counsel's Report: none

9. Public Comment: none

10. Board Member Comments: none

11. Next Planned BZA Meeting:

**January 19, 2017 at 7:00 pm**

12. Adjournment: **Mr. Martin made motion to adjourned, Mr. Warner second. Meeting adjourned.**

Signatures:

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Recorder

Date: \_\_\_\_\_

Location:

Cicero Town Hall  
70 N Byron Street  
Cicero, IN 46034