



MEETING RESULTS- ZIONSVILLE BOARD OF ZONING APPEALS August 9, 2016

The Regular meeting of the Zionsville Board of Zoning Appeals was scheduled Tuesday, August 9, 2016 at 6:30 p.m. in the Bev Harves Room at Zionsville Town Hall, 1100 West Oak Street.

The following items are scheduled for consideration:

- I. Pledge of Allegiance
- II. Attendance
- III. Approval of the July 12, 2016 Meeting Minutes
- IV. Continuance Requests - None at this time
- V. Continued Business - None at this time
- VI. New Business

Docket Number	Name	Address of Project	Item to be considered
2016-19-DSV	Cobble Creek	9085 E. Oak Street	Approved 5 in Favor 0 Opposed Petition for Development Standards Variance to
2016-20-DSV	PL Properties LLC	8250 E. 100 South	Approved with Conditions and Commitments 5 in Favor 0 Opposed Petition for Development Standards Variance to provide for 4 (four) lots with a lot width to depth ratio exceeding 3 to 1 in the (R1) Rural Residential Zoning District

VII. Other Matters to be considered:

Docket Number	Name	Address of Project	Item to be considered
2016-15-SE	McDavitt	9944 E. State Road 32	Right to Farm Form Completed
2016-10-UV	W. Totty	665 W. Laurel Ave.	Findings of Fact for review Executed

Respectfully Submitted:
Wayne DeLong AICP
Town of Zionsville
Director of Planning and Economic Development

August 10, 2016



Petition Number: 2016-19-DSV

Subject Site Address: 9085 E. Oak Street

Petitioner: Pulte Homes of Indiana, LLC

Representative: Tim Ochs

Request: Petition for Development Standards Variance to deviate from the required front yard setbacks in the (R1) and (R2) Rural Residential Zoning District

Current Zoning: (R1) and (R2) (Rural) Low Density Single Family and Two Family Residential

Current Land Use: Residential

Approximate Acreage: 99.671 acres

Zoning History: 2016-37-PP and 2016-38-DP (both pending)

Exhibits: Exhibit 1 – Staff Report
Exhibit 2 – Aerial Location Map
Exhibit 3 – Proposed Site Plan
Exhibit 4 – Findings of Fact

Staff Reviewer: Wayne DeLong, AICP

PETITION HISTORY

This petition will be heard at the August 9, 2016 Board of Zoning Appeals meeting. Both the Primary Plat Petition (2016-37-PP) and Development Plan Petition (2016-38-DP) are docketed for hearing at August 15, 2016 Plan Commission meeting.

PROPERTY HISTORY

The overall subject site is improved with two (2) single-family dwellings. These dwelling will be demolished as the project progresses.

ANALYSIS

As proposed, the site is requested to be improved with 105 single family residences (scheduled to be presented to the Plan Commission for consideration at its August 15, 2016 hearing).

FRONT YARD SETBACK

By Ordinance, property in the Rural district is required to provide for a minimum front yard setback of either 70 feet from the center line of the road OR 20 feet from the right-of-way (whichever is greater). As proposed, the development would provide for a minimum front yard setback of 20 feet from the proposed right-of-way for side load and courtyard garages, and for 25 feet from the right of way for front load garages. As the ordinance standard mandates the "greater" of the two standards, technically the development (as proposed) would need relief from the standard in order to construct the proposed improvements.

Staff is supportive of the request to provide for the proposed minimum front yard setbacks:

25-foot front yard setback from the proposed right-of-way (only), single-family dwelling utilizing a front load garage

20-foot front yard setback from the proposed right-of-way (only), single-family dwelling utilizing a side load garage or courtyard garage

In the opinion of staff, the proposal meets the intent of the ordinance and adequate separation from the public way will be provided with a minor adjustment to the minimum setback requested based on use of front load garage versus a side load garage. Staff has come to the conclusion that the 70 foot standard is a useful standard for situations where platted right-of-way does not exist (in the case of a parcel's legal description to the center line of a roadway). Further, the Town, who assumed zoning authority over this area in 2010, requires the platting of a 60 foot wide right-of-way (County standard is 50 feet). The additional right-of-way (beyond what the former zoning authority required) provides for additional separation between the traveling public, the public way, and private improvements constructed parallel to the right-of-way.

Further, the Petitioner's inclusion of the 25-foot front yard setback as related to front loaded garages addresses staff's ongoing concern with the resulting length of a driveway when

associated with a front load garage attached to a single-family dwelling. A 20-foot setback, in some cases when associated with a front load garage, has the potential to result in vehicles protruding into the travel lane of the public way (in the event that vehicles are parked bumper to bumper in a driveway).

PROCEDURAL – VARIANCE TO DEVIATE FROM STANDARDS

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

- a) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*
- b) *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*
- c) *the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property:*

Proposed Findings of Fact are attached for the Board of Zoning Appeal’s consideration.

STAFF RECOMMENDATION

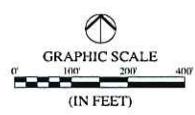
Staff recommends approval of the petition as filed.

RECOMMENDED MOTION

I move that Docket #2016-19-DSV design standards variance in the Rural R1 and R2 Zoning District to deviate from the required front yard setbacks in the (R1) and (R2) Rural Residential Zoning District for the subdivision located at 9085 E. Oak Street be (Approved, based on the finding and based upon staff report and presentation / Approved, based on the finding as presented / Denied / Continued).



Exhibit 3



RUSSELL LAKE
 OVERALL PLAN
 ZIONSVILLE, BOONE COUNTY, INDIANA
 JULY 6, 2015

**TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA**

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

- 1. The grant (~~will~~ **will not**) be injurious to the public health, safety, morals, and general welfare of the community because:

The proposed setback of 20 feet or 25 feet will provide for front yards and open space for single family homes that are adequate in size to allow for all necessary utilities, infrastructure and landscaping.

- 2. The use or value of the area adjacent to the property included in the variance (~~will~~ **will not**) be affected in a substantially adverse manner because:

The variance will not cause a significant reduction in the front yard required by the zoning ordinance, and a 20' or 25' foot front yard is large enough that it will have no impact on the area adjacent to the proposed subdivision.

- 3. Strict application of the terms of the zoning ordinance (**will** / ~~will not~~) result in unnecessary hardships in the use of the property because:

The subdivision is a planned project that will include only single family uses. As a result, it is highly unlikely that additional right of way will ever be necessary. Using a setback from the centerline of the right-of-way, therefore, is unnecessary and represents hardship in the use of the property, as current homebuyers do not want large front yards and the maintenance that comes with such a large front yard.

DECISION

It is therefore the decision of this body that this VARIANCE petition is APPROVED/DENIED.

Adopted this _____ day of _____, 201__.



Petition Number: 2016-20-DSV

Subject Site Address: 8250 E. 100 South

Petitioner: PL Properties, LLC

Representative: Nick Churchill

Request: Petition for Development Standards Variance to provide for 4 (four) lots with a lot width to depth ration exceeding 3 to 1 in the (R1) Rural Residential Zoning District

Current Zoning: (R1) Rural Low Density Single Family and Two-Family Residential Zoning District

Current Land Use: Residential

Approximate Acreage: 32.31 Acres

Zoning History: 2016-41-MP (Pending)

Exhibits: Exhibit 1- Staff Report
Exhibit 2- Aerial Location Map
Exhibit 3 - Petitioners Site Exhibit
Exhibit 4- Petitioner's proposed Findings of Fact

Staff Reviewer: Wayne DeLong, AICP

PETITION HISTORY

This petition will receive a public hearing at the August 9, 2016 Board of Zoning Appeals meeting. The Minor Plat submittal is docketed for hearing at August 15, 2016 Plan Commission meeting.

PROPERTY HISTORY

The overall site is comprised of two (1) parcel totaling 32.31 acres in size and has been utilized for dwelling and agricultural purposes. Currently it is improved with accessory building formerly associated with a residential use and prior agricultural activities.

ANALYSIS

The 12.5 acre parcel is currently utilized for agricultural purposes and is intended to be subdivided to provide for four (4) building site. As contemplated, the proposed dimensions result in a lot depth to lot width ratio in excess of 3:1 (depth to width). Per the Ordinance, the maximum allowable lot depth ratio is 3:1. Note: lot depths in excess of Ordinance standards are found in proximity to the subject site (east of site, and northeast of site). The requested dimensions are described as follows:

Lot 01	Width: 296.79 ft	Max. Depth: 1322.28 ft	Acreage: 9.0
Lot 02	Width: 256.97 ft	Max. Depth: 1323.44 ft	Acreage: 7.85
Lot 03	Width: 256.97 ft	Max. Depth: 1324.61 ft	Acreage: 7.85
Lot 04	Width: 262.83 ft	Max. Depth: 1325.79 ft	Acreage: 8.0

The intention of the lot depth to width ratio is to reduce the probability of “flag lot” development-the creation of a long slender lot containing only the minimum amount of road frontage required which leads to a larger area (generally containing only the minimum amount of lot area necessary to support a dwelling).

As the condition of a deep lot with reduced road frontage is a characteristic found in east and northeast of the subject site, the request is not introducing a new characteristic into the area. With that fact in mind, staff is in support of the petition as filed. If the development characteristic was not found in the area, staff would reevaluate its support for the contemplated development.

PROCEDURAL – CONSIDERATION OF A DEVELOPMENT STANDARDS VARIANCE PETITION

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

- (a) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

(b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

(c) the strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property.

Proposed Findings of Fact are attached for the Board of Zoning Appeal's consideration.

STAFF RECOMMENDATIONS

Staff recommends approval of the design standards variance included in Docket #2016-20-DSV.

RECOMMENDATION MOTION

I move that Docket #2016-20-DSV design standards variance to Petition for Development Standards variance to provide for 4 (four) lots (as described in this staff report, to be established in conformance with the Subdivision Control Ordinance) with lot width to depth ratio exceeding 3 to 1 be (Approved as filed / Denied/ Continued) as presented.

PROCEDURAL NOTES

The subject site, as previously noted, is currently improved with accessory buildings. If permitted to remain, the percentage of accessory uses on the parcel may negatively impact the ability to improve a building site with a new single-family dwelling.

As a portion of the property is within the Special Flood Hazard Area (SFHA) associated with Lennox Ditch, it is subject to additional development restrictions (limitations of size, placement, and floor elevation of buildings). Dependent on the location of any contemplated improvements, approvals from the Federal Emergency Management Agency, Indiana Department of Natural Resources, the Boone County Surveyor, and / or the Town (in conjunctions with the Town's Ordinance for Flood Hazard Areas) may be necessary (specific to the SFHA).

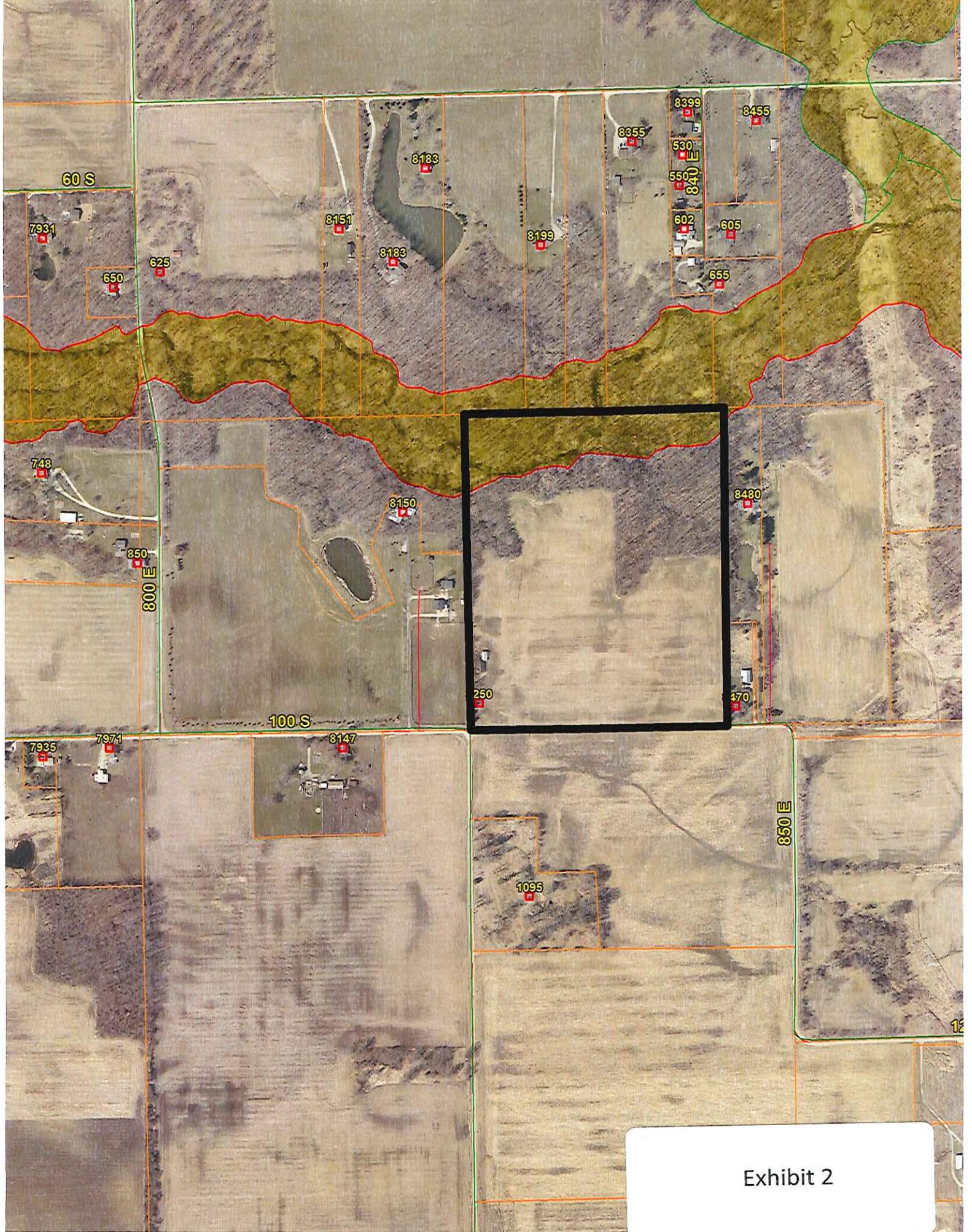


Exhibit 2

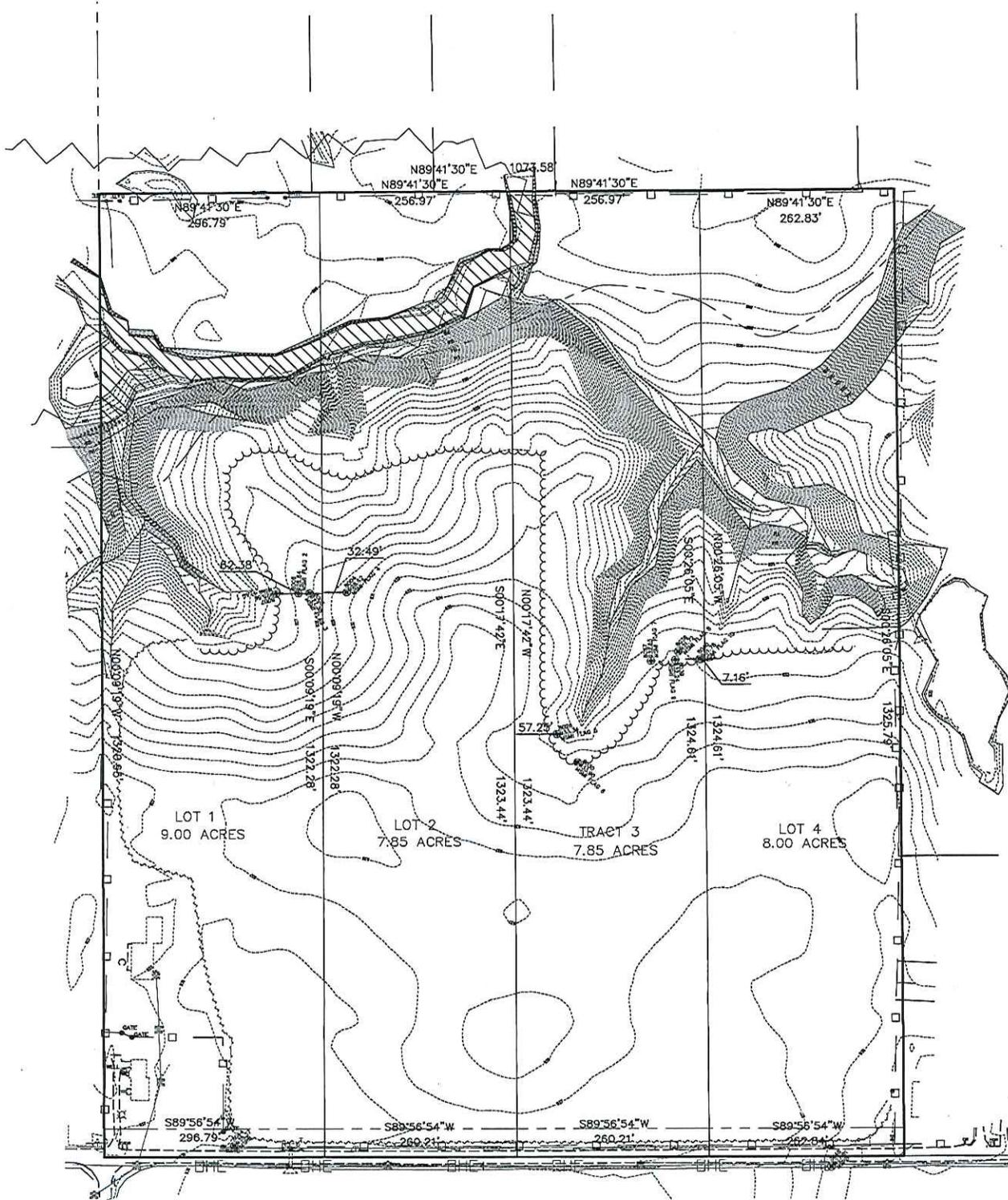


Exhibit 3

TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

- 1. The grant (**will / will not**) be injurious to the public health, safety, morals, and general welfare of the community because:
The proposed subdivision, the resultant lot sizes and the proposed use are in line with the neighboring properties and the current rural character of the area.

- 2. The use or value of the area adjacent to the property included in the variance (**will / will not**) be affected in a substantially adverse manner because:
The single family estates and the new investments they represent will positively impact the value of the area based upon current assessed values. The nature of the proposed lots will be of the existing character and further enhance the area.

- 3. Strict application of the terms of the zoning ordinance (**will / will not**) result in unnecessary hardships in the use of the property because:

Given the depth of this parcel at approximately 1,321 linear feet the application of the 3:1 ratio requirement prevents the creation of anything less than two, 16 acre lots due to that depth whereas the R-1 zoning permits a minimum lot size of two acres.

DECISION

It is therefore the decision of this body that this VARIANCE petition is APPROVED/DENIED.

Adopted this _____ day of _____, 201__.

**Town of Zionsville
Board of Zoning Appeals
August 9, 2016**

Pledge of Allegiance was said and attendance was taken by the Secretary.
Present: Greg Morical, Chairman, Larry Jones, Al Wopshall, John Wolff, Julia Evinger.

Staff attending: Carol Sparks Drake, attorney; Wayne DeLong.
A quorum is present.

Morical Good evening and welcome to the August 9, 2016, meeting of the Board of Zoning Appeals for the Town of Zionsville. The first item on our agenda is the Pledge of Allegiance.

All Pledge.

Morical The next item on our agenda is attendance.

DeLong Mr. Morical?

Morical Present.

DeLong Mr. Wopshall?

Wopshall Present.

DeLong Mr. Jones?

Jones Present.

DeLong Mr. Wolff?

Wolff Present.

DeLong Ms. Evinger?

Evinger Present.

Morical The next item on our agenda is approval of the July 12, 2016, meeting minutes, that were distributed to the Board as part of your meeting materials. Are there any comments on the minutes? Hearing none, I would entertain a motion.

Evinger I make a motion to approve the minutes as presented.

Morical Thank you. Is there a second?

Wopshall I second it.

Morical All those in favor, please say aye.

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All Aye.

Morical Any opposed? Motion carries. The next item on the agenda is continuance requests. We have none at this time. And continued business. We have none at this time. So, the next item is new business and that's Docket # 2016-19-DSV Cobble Creek. Please state your name and address for the record.

Ochs Good evening. For the record, my name is Tim Ochs. I'm an attorney at Ice Miller with offices at One American Square, Suite 2900, Indianapolis, Indiana 46282-0200. I'm here this evening on behalf of Pulte Homes of Indiana, LLC, the petitioner. Also with me tonight, Ashley Bedell and Dave Compton of Pulte Homes. I think the staff report that was prepared, as always, is an excellent job and kind of hits the nail on the head. I'll try not to repeat much from that but I wanted to highlight that on the front end because I think it's entirely appropriate. Also, I think it's important to keep in mind that this is a single development standards variance, that is, to allow a reduced front yard. The requirement of the ordinance is the greater of a certain distance from the center line of the road or 20 feet. And, we can make the 20 feet. It's the greater of and we certainly feel that it's not necessary because that requirement, which is really a holdover from way back in the zoning ordinance that applied in the area, really applies in situations where you do not have dedicated right of way that's created by a plat. In other words, it's contemplating, for instance, a road—a home on a county road that may at some point in time be expanded so you need to have that extra setback. Here, we're—all our homes front on streets that are dedicated in the plat. The right of way is actually a little bit wider than the old 50-foot standard. It's actually 60 feet as pointed out in the staff report. So, a few slides here. Hopefully, you can see that on the screen. This is the site plan. Again, this is in your packet. It basically just shows the entrance off of Oak Street just to the west of this building on the other side of Ford Road. With the exception of what we are seeking in terms of the variance, we believe this meets all the other requirements. Again, on Monday, in front of the Plan Commission, we will have a public hearing on the primary plat and development plan. To the extent there are any issues related to density, price point, layout, access point on Oak Street, all of those fun issues, that's appropriate for Monday night. Again, this is just the front yard setback request.

Very quickly, this is a lot, a typical lot that is proposed for the subdivision and a typical home that Pulte would construct on it. The right side or, excuse me, the left side of this slide shows the home as it would be situated if we were required to adhere to the 70-foot setback from the center line of the right of way which is 60-foot wide now. It creates a very large front yard and a very, very small back yard. The second picture, which is to the right side of the frame, that shows what the home would look like as oriented on the lot with the home pushed up with a setback of 20 feet. This particular home has a side garage entry which is important because 20 feet will work for a side load garage but we are requesting only 25 feet minimum for front load garage. Speaking of that, this is the, another typical lot, but this is the home with the front load garage and, as you can see, on the right side of the page, the setback is 25 feet. That will allow the biggest of your typical vehicles, let's say a Suburban or a full-size pickup truck, to be able

to park in the driveway without sticking out over the sidewalk and inhibiting pedestrians from walking in front of the garage. These are two example homes that would be very similar to what would be constructed in Cobble Creek. The first home is the side load garage, and then the home on the bottom right-hand side of this frame is the front load garage and we intentionally pulled a full-size pickup truck into that driveway to show that you can pull up to the garage door and park your vehicle in the driveway and not block the sidewalk.

So, with that, we'd be happy to answer any questions that the Board might have. I refer you to the findings of fact that were submitted as part of the petition, and we'd be happy to answer any questions.

Morical Thank you, Mr. Ochs. Are there any questions for the petitioner? Thank you, Mr. Ochs. Are there any remonstrators here tonight? Please approach the podium and state your name and address for the record.

Smith Thank you. Is it appropriate to ask a question or two of the—is that allowed or not?

Morical Sure, but please state your name and address.

Smith Yeah, my name is Curt Smith. C-u-r-t. 6295 Boone Ridge. We would be across from one of the new entrances into this neighborhood. We got the material. We're not real sophisticated in these things. How much ground is this project going to cover?

Ochs 99-100 acres

Smith Okay. Thank you. And, did I just understand that the lot variance, the topic of the meeting tonight, the lot is going to be 140 feet no matter what?

Morical The only issue in front of us tonight is--

Smith The variance.

Morical In particular, the front yard setback variance. The lot size and the overall development itself will be addressed in front of the Plan Commission.

Smith It appears—it appears to me as an unsophisticated, you know, future neighbor, that the variance is for density purposes and therefore, I would oppose it. Some one may say, "No, it's all, you know, six of one, half a dozen of another." But, to me, the variance appears to be, no architectural or landscaping reason, it's got to do with density. So, I would oppose it on that, if my understanding is not flawed.

Morical So you're opposing the--

Smith The lot line variance.

Morical Because of the—because you think it's increased density?

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- Smith Yes, I believe it's about density not other compelling reasons so I would ask that the existing ordinance be enforced.
- Morical Okay, so we have three different elements that the petitioner needs to prove to be entitled to a variance, this type of variance. That it will not be injurious to the public health, safety, morals and general welfare of the community, No. 1. No 2, the use or value of the area adjacent to the property included in the variance will be affected—will not be affected in a substantially adverse manner and No. 3, strict application of the terms of the zoning ordinance will result in unnecessary hardships in the use of the property. So, is your concern--
- Smith No. 2.
- Morical That it's going to adversely affect the value--
- Smith The density, the density—I mean, we can talk about traffic and schools and taxes at Monday night's meeting but density.
- Morical I think that's probably best put to the Plan Commission. Thank you very much.
- Smith Thank you.
- Morical Are there any other remonstrators here tonight? Thank you. Please state your name and address for the record.
- Kaerner My name is Andreas Kaerner. I'm at 6260 Boone Ridge in Zionsville right across the street. In fact, I submitted some written comments to the Board, some of which are outside of today's discussion. I was unaware there was a meeting next Monday at the time when I submitted those. Obviously, those comments will be pushed forth to the Monday discussion. But, along with Curt, I do have a serious concern about this setback mainly because it supports a higher density of housing in that area. And, the traffic is certainly going to be a big issue right there. It's a dangerous road to begin with and, you know, from a housing standpoint for us across the street, you know, we think that having that high of a density would certainly be negative for us. So, I would be opposed to that.
- Morical Okay, we appreciate that. Thank you, Mr. Kaerner.
- Kaerner Thank you.
- Morical Any questions for Mr. Kaerner? Okay, thank you. Mr. Ochs, would you care to state anything in rebuttal?
- Ochs I'll just be very brief. One, I don't believe the density argument is actually relevant to this particular case and what's before you tonight. Frankly, the density meets the ordinance requirements. We're not asking for a variance from those requirements. We're not asking for a variance of lot size. We're not asking for a variance of density or anything of that sort. So, since it complies with the

ordinance, I don't think it's necessarily relevant. That's again, some of the issues that are more appropriate for the Plan Commission. There is the suggestion that this is done just to support greater density and I think if you take a look at the site plan itself and how this is oriented on the site, there are a lot of natural features on this site, just not Russell Lake but a lot of green area, and we want to maintain as much of that as possible. This layout allows us to do that. It pinches the development to the center of the property and leaves those areas on the perimeter natural and green, including the lake. We think that's a great design, and it's being a great neighbor, frankly. So, we, we do think we meet all the requirements. This is, when you say an unnecessary hardship, we believe it's completely unnecessary. We meet one of the criteria and the alternative, we think, is inappropriate for a platted subdivision. Again, with that, we'd be happy to answer any questions that the Board might have.

- Morical Thank you, Mr. Ochs. It's clear that with the materials you submitted that your client could build a number of homes, was planning to build even per the ordinance with the setback, so we're mindful of what we're focused on tonight. Any further questions for the petitioner?
- Wolff I probably have a couple. And, Mr. Ochs, you may not be familiar with every single lot but on the documentation you provided us, the depth of the lot is 140 feet. Is that the smallest lot?
- Ochs Yes.
- Wolff Okay, so if we were to not grant the variance per your documents that you showed us earlier, you could still put the same number of houses on the property. They would just be pushed farther back and have smaller back yards?
- Ochs Very, very small backyards. In terms of, you know, if you're looking, you're in the market and you're going to buy one of these homes, as a purchaser, what would you rather have? A very large front yard or a much larger back yard? People for the most part, especially with a lot of these, hopefully what I'll call de-nesters, that front yard is just extra maintenance and a waste of space, quite frankly whereas if you pushed that space into the backyard, that's, it's usable. They can go out and have a nice patio or a nice deck and enjoy your back yard.
- Wolff So, I certainly respect the remonstrators' concerns, and kind of the theme I heard was density, and I don't want to have Monday's conversation tonight, but I don't think this particular variance request would affect the density because potentially it wouldn't change the number of houses. However, it may change the marketability of the product. People would prefer to have a larger rear yard.
- Ochs We believe that certainly is the case. But, you are correct.
- Morical Thank you. Any other questions for the petitioner?
- Jones Yeah, just real quick. So basically, the 140 foot is sort of the minimum.

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- Ochs Yes.
- Jones Because I was sorta looking at lots like 84, 85, 86, 87. There's just a few spots where they seem to be a little smaller than the 92-102, but I also see a lot of lots that seem to be deeper than this 140 feet. I'm kind of going to just assume that what is being asked is sort of a minimum to allow houses to be pulled up if needed. I'm assuming that once Pulte comes to a final set of documents, they will actually specify where the building pads will be and usually, they put a little variation in the fronts and move the houses around some. I think it's also worth noting, too, to help support what Mr. Ochs is saying is that we're pretty adamant about not allowing any construction in the drainage and utility easements across the backs of the property. I think we've heard some variance requests where people have inadvertently built back there. So, I think it is correct in what he is saying is that providing a little more land in the back allows for porches and patios and other items without getting us into problems with, you know, construction going on in our drainage and utility easements. So, that's all I have to say about that. Oh, quick question, too. There's really only one primary entrance and that other entrance that's a little more east of the primary is really for a secondary Fire Department access?
- Ochs That is correct.
- Morical Any further questions for Mr. Ochs? Oh, I'm sorry. I apologize. Please. Approach the podium and state your name and address for the record.
- D. Smith I'm Debbie Smith. I'm Curt's wife and I'm across the street from this project at 6295 Boone Ridge. So, listening just a second ago to how the marketability is an issue with these small back yards, it would seem to me that maybe the way that they drew this up and the number of pieces of property that they want to squeeze in here might need to change. If they need bigger back yards, they can create that by having fewer pieces of property. It doesn't have to be squeezed in like this.
- Morical No, but the size of what they are proposing meets the zoning ordinance for the size of the lots.
- D. Smith So, there are two issues here. There's meeting the size of the lot and then how the house is gonna sit on there and whether it's marketable.
- Morical Well, the size of their lots actually meets the zoning ordinance. So, they don't have to request an exception for that. The only question is how far forward or back they need to be.
- D. Smith So, if they want it to be marketable, they may need to change the way they've drawn it.
- Morical Okay, thank you. Are there any other questions or comments from the remonstrators? Hearing none, may we have the staff report, please?

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- DeLong Thank you. Staff is supportive of the petition as filed. The petitioner is seeking a reduced front yard setback as discussed this evening in the R1 and R2 zoning districts. The property itself is currently served by septic systems, private wells and predominantly, your county setbacks in part, were set up to allow and support rural residential development. Fast forward to today's world where we have a subdivision control ordinance which has always been one of the Town's and not the County's where you require a 60-foot right of way dedication instead of 50 and service to areas that are—plan to be served by sanitary sewer and potable water systems. Part of these larger setbacks were to set aside area for ample improvements in the future based upon county road standards and other county-type development requirements. With the urbanization of these areas and specifically, this corridor which will happen over time, this variance comes in front of you in anticipation of those changes. The request that you are considering, the 25-foot setback for front load product and 20-foot setback for side load product is the same type of variance that has been in front of the Board for Vonterra as well as for Hidden Pines, Section 1 and Section 2. So, this is not a new request for you to consider. Certainly, the facts are always site specific and certainly the conversation for this evening is related to that. But, again, staff is recommending approval of the petition, and I would be happy to answer any questions.
- Morical Thank you, Wayne. Are there any questions for staff? Hearing none, I would entertain a motion.
- Wolff I'll make a motion. I move that Docket # 2016-19-Design Standards Variance in the rural R1 and R2 zoning district, deviate from the required front yard setbacks in the R1 and R2 rural residential zoning districts for the subdivision located at 9085 E. Oak Street be approved based on the findings and based on the staff report presentation.
- Morical Thank you. Is there a second?
- Jones Second.
- Morical All those in favor, please say aye.
- All Aye.
- Morical Any opposed? Motion carries. Thank you. The next item on our agenda is Docket # 2016-20-DSV, PL Properties, LLC. Please state your name and address for the record.
- Churchill Absolutely. Ladies and gentlemen, good evening. For the record, my name is Nick Churchill with Pittman Partners. I am actually here representing the petitioner, PL Properties. Our office is at 12821 E. New Market Street, Suite 310. We come before you today to request a development standards variance from the lot depth to width requirement. That's a 3:1 requirement in the R1 rural zoning district that we're in. We have a 32-acre piece of property on the north side of 100 South between 800 East and 850 East. The property is currently being

farmed but has some very significant topography on the north end. As proposed, it's our intent, if this development standards variance is granted, that we would create four lots that would vary in size from 7.85 acres to 9 acres. This would be in keeping with the rural character of the area as well as addressing the unique features of the site. That topography to the north, I believe, um, Exhibit 2 and Exhibit 3 in the staff report. Exhibit 3 would probably do the best job of really highlighting the topography that we're dealing with and the true, what I would refer to as effective depth, of the lot. We recognize that the intent of that 3:1 ratio is to prevent the development of a flag lot. In this particular instance, I think the lots' actually buildable area would be more in keeping with that 3:1 ratio. However, just given the unique characteristics of this site and for simplicity's sake, extending those lot lines all the way to the rear of the property would encompass a great deal of that topography that is otherwise unbuildable. That being said, I'm happy to answer any questions that you have and I look forward to addressing those.

Morical Thank you, Mr. Churchill. Are there questions for Mr. Churchill?

Evinger Just, um, it was noted in our report that there are some existing structures on, I think it's Lot 1, that's how it appears. Are you intending to keep those structures and still build an additional residence or is this going to be demolished?

Churchill Yeah, those structures are—they are very old outbuildings, remnants from an existing farm. They're in complete disrepair, and they will be torn down as part of the improvement of that site. They will not remain.

Evinger Okay. And, then second question, as your, has—I'm looking at the primary plat and again, you have positioned on here the houses, the septic field, the garage and one lot, the barn. Is this pretty much how you're planning on having it for your building envelope then?

Churchill I would say, um, Lot #1, that's under contract and Lot #4 is under contract pending positive results from this meeting and then the minor plat procedure that we'll be pursuing next week. Um, Lot #1 is actually under contract with an engineer who's incredibly detailed so I believe that one is very close. Lot 2, 3 and 4 are very conceptual. However, there has been some preliminary soil testing to make sure that a septic system can be supported based upon those conceptual locations. As well as, I believe back in 2005, there was extensive soil testing done for that purpose and that's on file with the Boone County Health Department as well.

Evinger Okay, thank you.

Wopshall Have you looked at Exhibit 2, the orange lines that are to the north, do you think those represent lot lines from other similar lots?

Churchill I believe that's exactly the case. In fact, you can see the address points and I think it's also noted on page 2 of the staff report, the existence of very similar sort of development patterns, both to our north, northeast and I would say to our

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immediate east as well, 8480 and 8470, well 8480 for sure, 8470 appears to potentially be within that 3:1 ratio. But, 8480 I would classify as a standard flag lot, almost by definition.

Morical Are there any other questions for the petitioner?

Jones This is not so much a question, but I think when this thing comes before the Plan Commission, I think they'll probably want to be seeing some language about sort of right to farm and then provisions about no additional subdividing so we don't—we've run across this a couple other times, the DeRossi property was just a recent one of permitting flag lots but since they are considered what they call estate size. We're working around making sure what's directly north of this property doesn't happen. I guess I'm going to be interested in seeing some of the same commitments that if we're getting into this habit of allowing this, that we put additional constraints on it.

Morical Are you amenable to those?

Churchill I'm actually not familiar with, was it the right to farm language?

Morical So, if, if, counsel, do you want to address that? Or Wayne?

Drake The right to farm language basically is an acknowledgment that there are agricultural activities going on and you will not claim they are nuisances, etc. It's kind of a heads-up, an acknowledgment.

Churchill Absolutely.

Drake And, then, I think the other item that Larry was referring to would be a commitment that you are subdividing into a four-lot minor plat, and there will not be further lots created in the future.

Churchill Okay. Okay. And that would be something we would deal with at the minor plat hearing?

Drake I think his suggestion was that when you go before the Plan Commission because Larry serves on this Board from the Plan Commission.

Churchill Absolutely, I think I will, well, I don't want to speak out of turn but I think on the right to farm, we would absolutely plan on doing that. I think there's another notation that was requested from Boone County Highway, just with the character of that gravel road that will, in fact, that they do not have any plans on improving that road. So, I think a similar note with the farming is spot-on. I just want to check with some folks before the Plan Commission to talk about the right to further subdivide. I don't see it as being an issue but just to make absolutely certain before we appear before the Plan Commission. I appreciate the heads-up.

Drake And, and you can get copies of the language that's been used so you have it in hand to share.

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- Churchill Okay, perfect. Thank you so much.
- Morical Any further questions or comments for the petitioner? Hearing none, are there any remonstrators here tonight? Seeing none, may we have the Staff Report, please?
- DeLong Thank you. Staff is supportive of the petition as filed. And I'll jump right to the comments related to the property to the north. Staff, as it was indicated in the petitioner's presentation, we address and speak to the properties to the east and northeast as flag lots. The land directly to the north, those three slender parcels, are all owned by the same party. And, we would not view that as typical flag lot construction. To the contrary, the party that owns those parcels, I've met with him, and I understand his great concern personally related to the creation of flag lots. So, again, I would just offer representation that I would not look at those parcels to the north as typical flag lot construction. However, to the east and to the northeast, you do find very clearly illustrated parcels that are the characteristic that is requested this evening and, and I'm sure you'll recall from your other hearings related to these very specific requests that staff is first and foremost charged with looking at what are the characteristics in the area and are they of a similar nature to the ones that are being requested by the petitioner. In this case, staff would find that these characteristics are out there and the petitioner is proposing a development pattern that is supportive. Mr Jones brings up a good point related to further subdivision. Certainly, that is something that is within the BZA's purview to address this evening. Certainly, if that is something to be assigned to the Plan Commission to think about as a commitment or condition related to the development plan, that is certainly applicable. I do want to pause for a minute. I don't have the Plan Commission's agenda in front of me. Is there, not to defer to the petitioner, with that minor plat, is there a development plan associated with that? Typically, we don't see that.
- Churchill I don't believe there is a development plan associated with it. However, I do believe you have in front of you a copy of the secondary plat. So, if we wanted to affix any sort of notations or requirements, I don't know if that would be sufficient or—
- DeLong Well, I would offer that the subdivision in Indiana is ministerial in nature. As long as the project meets the minimum standards of the Subdivision Control Ordinance, the Plan Commission is bound to approve it. That being said, to request commitments that are above and beyond what the Subdivision Control Ordinance requires is murky water. Without having a development plan to tie that commitment to, um, again, it's murky water. Counsel, counsel, please, offer your opinion.
- Drake I think Wayne's comments are well taken under the statute. You, as the BZA, can make it a condition to a variance to make certain commitments. So, Larry, if you are inclined to incorporate what the Plan Commission has been doing when development plans have been in front of them, that certainly could be under consideration as a condition that that commitment be incorporated this evening in

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connection with the variance. Because if there is no development plan going in front of the Plan Commission—

Jones So, the point you're making is that basically, once we approve this variance, it does not need to come before the Plan Commission, correct? Did I hear that correct? No.

DeLong No, what the, what you have is the, there's two different swim lanes if you will for the consideration. The Plan Commission can only when we're just dealing with a plat filing, the rules in play are whatever the Subdivision Control Ordinance says. There is nothing in there about lot sizes. So, if there is a further subdivision attempt on this property, it would have to come back automatically to the BZA. So, you have that check and balance built in. Certainly, if you want to have another layer of, you know, checks and balances, that's where that commitment would come from. Carol, is that summarizing?

Drake I would concur.

Jones Why would it automatically come back before us?

DeLong It would be further creation of a flag lot. I mean, now,--

Jones Potentially or potentially not.

DeLong That's—yes.

Drake It depends on how it's configured.

Morical Right. So, it may not automatically come back in front of us.

Drake Correct.

Jones And based on what you said originally, that you've taken in to review, the adjoining properties and their development, directly on the northeast corner is a further subdivided piece of property, correct?

DeLong Right. That illustrates somebody who has gone in and cut out 200 x 200 blocks and created five or six lots while still maintaining the flag nature of the original tract. What staff would look at if this were to come up is that someone is taking a flag lot and increasing its nonconformity. However, it makes a very challenging situation when the house that is on the lot that is experiencing the increased nonconformity is the only one that's out of compliance. I mean, it's, it's, let's say that someone's cutting off that 200 x 200 square that has frontage. So, Greg is, Mr. Morical is pointing out that it is possible that someone could come in and plat a lot that conforms.

Churchill Could we—oh, sorry to interrupt. Go ahead. Would it be possible to tie the granting of the variance if you are inclined to do so specifically to the subdivision of four, no more than four lots? And, that way, if for some reason, the minor plat

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isn't approved on Monday, and we have to come back through a primary plat, where we would have to come into compliance perhaps with that 3:1 ratio, we'd still have the ability to do so without restricting with a blanket restriction on no further subdivision. Sorry, that was a mouthful.

DeLong I think—I think what you're saying is to go forward with the variance as it's filed for the four lots allowing for maybe the lot lines to maybe move east to west just in case there is reconfiguration that's necessary as this goes through the Plan Commission.

Churchill And just to address your concern about further subdivision, this variance would only allow four lots. If for some reason, someone in the future tried to carve off those little 200 x 200 lots, they would obviously be in conflict with this variance because there would already be four lots in place.

Morical Well, no. So, tonight and that was what we were talking about, whether or not it would automatically come back in front of us, the question would be whether or not they'd need a variance in that future case to split up one of those lots or not and they may not. Um, so, what we were discussing is whether we should affirmatively require as a covenant on the property that none of the owners of those four lots could further subdivide them.

Churchill Okay. All right. I think that could work if we push it onto the next owner, that would presume that those four lots had been created. So, yeah, I think that's—

Morical How much flexibility can we give them in moving the lot lines?

DeLong I think the words 'substantial compliance' would give you some flexibility. Essentially, the plans for the site plan that's on file.

Morical Any further questions for staff? Carol, then we would note substantial compliance with the site plan as part of the motion, we'd also note a commitment?

Drake You would also require a commitment.

Morical To be filed?

Drake Recorded.

Morical Recorded, that on each one of the parcels that they would not be further subdivided.

Drake I think it should be recorded by the petitioner as part of the condition of the variance limiting this 32 acres to no more than the four lots shown or, no more than those with reasonable substantial compliance.

Morical With substantial compliance with the site plan, but it's going to be no further subdividing.

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- Drake But, it would be filed by the current petitioner, not by the subsequent owners because I can't bind folks that don't own the property. We need this owner to voluntarily agree to these commitments and then the subsequent owners will be on notice.
- Morical Right. We would be conditioning our variance on that. Okay. Mr. Churchill, bringing you back into the conversation, are you amenable to that?
- Churchill I believe so, as I understand it. Um, and the recorded commitment? I understand that could be a wholly separate document. Could it also suffice to be recorded with the secondary plat? I know. I'm pushing my luck.
- Drake Yes, I would prefer—we have rules that have been enacted about how quickly these commitments need to be on file or need to be recorded and my preference would be that you comply with those and your current owner, so we wouldn't get into a situation where your future purchasers are not on notice.
- Churchill Okay. All right.
- Morical Thank you. Any further questions or comments by the Board?
- Evinger So, I just—one more question. So, when we have those, if we have a commitment for substantial compliance we're going to tie that to the primary plat? What are we tying it to?
- Drake You're tying it to the variance as a condition of granting this variance.
- Morical Yeah, and the substantial compliance is we're granting the variance of the lot width to depth ratio in substantial compliance with the site plans submitted as part of the petition.
- Evinger Okay. Just because they're labeled and that's the reason why I'm asking if we want to—
- Morical Right and then with the future commitment that there's to be recorded on the full property that they'll be no further subdivision of those parcels.
- Drake Correct.
- DeLong And for clarity, I would suggest that that recordation occurs within 60 days of tonight's action. Give you plenty of time to work through that language.
- Churchill Okay and would you propose that we present the first draft of that language or do you guys have something available?
- Drake I think that Janice has a copy of what was just approved for the DeRossi property and your language will be similar although it will deviate a little since it's

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coming from the Board of Zoning Appeals but it will show you the premise and how it was addressed.

Churchill Okay. All right. Perfect. All right. Thank you all so much.

Morical We are excited to be following in the esteemed footsteps of the Plan Commission. Are there any other questions or comments?

Jones Did we get the right to farm piece in there, too?

Churchill Yeah, we can agree to that for sure.

Morical So, by saying right to farm piece, we require that the purchasers—

DeLong We have a stand alone document that's executed related to that.

Morical That's executed or recorded?

Drake It's executed by this petitioner.

Morical By this petitioner? Okay. And Mr. Churchill, you're amenable to that?

Churchill Absolutely.

Morical Okay. Um, I would entertain a motion for those to be so bold as to ad lib one.

Jones Let me get this straight what I just asked, offered up. I move that Docket # 2016-20-DSV design standards variance to petition for development standards variance to provide for four lots, as described in the staff report, to be established in substantial conformance—wait a minute, that doesn't make sense—to be established in conformance with the Subdivision Control Ordinance with lot width to depth ratio exceeding 3:1 be approved as filed with the following amendments, one being the filing of a right to farm form. Is that correct?

DeLong Right to farm acknowledgment.

Jones Right to farm acknowledgment and two, that the primary plat be recorded with a commitment that no further subdivision of the plat will occur above four lots.

Drake My recommendation would be that the commitments be recorded within 60 days not necessarily tied to the primary plat.

Jones Okay.

Morical And then, further we are going to say that we grant this variance with the lot to—width to depth ratio in substantial compliance with the site plan presented as part of the petition.

Jones I would accept that, yes.

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Morical Okay, thank you, Larry. Is there a second?

Evinger I'll second.

Morical Great. All those in favor please say aye.

All Aye.

Morical Any opposed? Motion carries. Thank you very much, Mr. Churchill. The next item on our agenda is Docket # 2016-15-SE McDavitt right to farm form completed.

DeLong That's just letting you know that that project has reached its conclusion, and they have executed the document.

Morical Thank you, Wayne, I was concerned about that, but now I'm relieved. The next item on our agenda is Docket # 2016-10-UV which is W. Totty. The Board received the draft of findings of fact for their review as part of their Board meeting packet. Are there any questions or comments on the findings of fact? Hearing none I would entertain a motion.

Evinger I make a motion to approve the findings of act as presented for petition # 2016-10 UV.

Morical Thank you. Is there a second?

Wopshall I second.

Morical All those in favor please say aye.

All Aye.

Morical Opposed? Motion carries. There being no further items before the Board of Zoning Appeals, I hereby declare us adjourned.