



MEETING RESULTS ZIONSVILLE BOARD OF ZONING APPEALS

Wednesday, November 2, 2022

6:30 PM (Local Time)

THIS PUBLIC MEETING WAS CONDUCTED ONSITE AT ZIONSVILLE TOWN HALL IN ROOM 105 (COUNCIL CHAMBERS), LOCATED AT 1100 WEST OAK STREET:

The following items are scheduled for consideration:

- I. Pledge of Allegiance
- II. Attendance **5 of 5 members attended. (In-person - S. Mundy, A. Pickell, L. Jones, K. Postlethwait Virtual – C. Lake)**
- III. Approval of the October 5, 2022, Minutes
- IV. Election of a Board of Zoning Appeals Secretary, Mike Dale **5 in Favor, 0 Opposed**
- V. Continuance or Withdrawal Requests

Docket Number	Name	Address of Project	Item to be considered
2022-58-DSV	Hoosier Storage Zionsville	7330 S. Indianapolis Road Whitestown, IN 46075	Petitioner requests a withdrawal of the Petition. BZA members acknowledged the withdrawal. Petition for a Development Standards Variance to provide for a reduction of the perimeter bufferyard and the landscaping requirements in the Rural General Industrial Zoning District (I-2).

VI. Continued Business

Docket Number	Name	Address of Project	Item to be considered
			None.

VII. New Business

Docket Number	Name	Address of Project	Item to be considered
2022-56-DSV	S. Torgeson	325 S. Third Street Zionsville, IN 46077	Approved as presented & filed w/ exhibits & per staff report. 5 in Favor, 0 Opposed Petition for a Development Standards Variance to provide for an enclosed porch addition which exceeds the allowable lot coverage in the Urban Village Residential Zoning District (R-V).
2022-57-DSV	M. Godbout	10703 Barrington Way Zionsville, IN 46077	Continued. Petitioner will return to the Board of Zoning Appeals after receiving a final determination from the Holliday Farms Architectural Review Board. 5 in Favor, 0 Opposed Petition for a Development Standards Variance to decrease the rear setback to provide for a swimming pool in the Holliday Farms Planned Unit Development.
2022-59-DSV	S. McCanna	1085 Starkey Road Zionsville, IN 46077	Approved as presented & filed w/ exhibits & per staff report. 5 in Favor, 0 Opposed Petition for a Development Standards Variance to provide for an addition to a single-family dwelling: 1) Exceeds the allowable lot coverage 2) Deviates from the required fifty (50) foot side yard setback 3) Memorialize the establishment of an existing 1-acre lot (Minimum lot size is 5 acres) 4) Memorialize the establishment of an existing lot width (Minimum lot width is 250 feet) 5) Memorialize the establishment of an existing lot frontage (Minimum lot frontage is 250 feet) in the Urban Open Land Zoning District (O-1).

VIII. Other Matters to be considered:

Docket Number	Name	Address of Project	Item to be considered
			None.

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In Attendance: Steve Mundy, Andy Pickell, Kathi Postlethwait and Larry Jones
Virtual Chris Lake

Staff attending: Mike Dale, Suzanne Baker, Janice Stevanovic, Darren Chadd,
attorney

A quorum is present.

Mundy Good evening and welcome to the November meeting of the Board of Zoning Appeals for Zionsville. The first item on the agenda is the Pledge of Allegiance. We'll invite the audience to join us.

All Pledge of Allegiance.

Mundy Thank you. The next item is attendance. I would ask that that be taken. Janice, will that be you or will that be –

Stevanovic That will be actually, our new Director, Mike Dale.

Mundy Okay. Mike, would you take attendance, please?

Dale Mr. Mundy?

Mundy Present.

Dale Mr. Lake?

Lake Present.

Dale Mr. Pickell?

Pickell Present.

Dale Ms. Postlethwait?

Postlethwait Present.

Dale Mr. Jones?

Jones Present.

Mundy Thank you. Next item on the agenda is the approval of the October 5th minutes of the meeting. That was included in your package. Are there any questions or corrections to be made? Hearing none, is there a motion to approve?

Postlethwait So moved.

Mundy Thank you Mrs. Postlethwait. Is there a second?

Pickell Second.

Mundy Thank you Mr. Pickell. All those in favor please say aye.

All Aye.

Mundy Opposed same sign.
[No response]

They are approved. Thank you.

Next item is election of a Board of Zoning Appeals secretary. You may recall that Janice has done that for two meetings now and we now have a new Director, Michael Day, [sic] who was introduced last meeting and we would like to, I'd like to ask for a nomination of Michael Day [sic] to, to replace Mrs. Stevanovic as the secretary.

Postlethwait So moved.

Mundy Thank you Mrs. Postlethwait. Is there a second to that?

Jones Second.

Mundy Thank you. Are there any other nominations? Hearing none, all those in favor please say aye.

All Aye.

Mundy Opposed same sign.
[No response]

Mike, thank you and welcome as the secretary.

Dale Thank you very much.

Mundy And to our agenda, we do have one request for a withdrawal. Docket Number 2022-58-DSV, Hoosier Storage of Zionsville at 7330 South Indianapolis Road, Whitestown, Indiana. Petitioner has requested a withdrawal of the petition. They've done this and it is so mentioned on the agenda so we don't need a motion, it is just for information only. That petition has been withdrawn. If anyone is here who came to hear that or speak to that petition, it has been withdrawn.

Next item on the docket is –

Postlethwait Mr. Mundy, I think we've got a man –

Mundy I'm sorry.

Kosloskey [_____ 9:12 inaudible off microphone]

Mundy If you would give us your name and address first please.

Kosloskey How you doing? John Kosloskey, 7395 Doyal Drive, Whitestown, Indiana. So my house is directly behind that lot. So it was, it was great news to hear that the petition was withdrawn. Just wondering if anyone had any further information on possible plans of this builder to submit a new petition in the coming months or year or?

Mundy I think I can only, I can only tell you that we have a very brief letter which we've received word from the owners of the proposed project, Hoosier Storage LLC, that they have decided to terminate the project so we need to withdraw the petition.

Kosloskey Okay.

Mundy Is there any more information that can be shared?

Baker That, that's all that we have.

Kosloskey And then, and is there any, what, what are processes of potentially rezoning or trying to get, get a piece of land like that rezoned or specifically, you know, just for example, where we are this, this neighborhood in Westwood Landing, it's right behind three or four houses directly behind and, and then a lot of neighbors that we spoke to were, were opposed to the idea of just having something like a big storage unit right there by our, where they walk every day. So, is there any process or, of, of, of getting the community together or certain city people to see if there's a chance for that?

Mundy I'm, I'm afraid you're asking the wrong group that question.

Kosloskey Okay. I'm unfamiliar with, with this and I, I intend to look a little further into it, I just was curious.

Dale I, I would suggest you give our office a call tomorrow – give it your first opportunity we have –

Kosloskey Okay.

Dale We'd be happy to talk to you more about that.

Kosloskey Yeah, because I mean, we're like, it's right outside our door. I got little boys playing in the yard and, obviously, I mean, I mean, I get business is business but yeah so I'll, I'll do that. And then last question – thank you for your time – I heard even the address as 7335 or Indiana, Indianapolis Drive, Whitestown, Indiana. Is there a reason why –

Mundy 7330 South –

Kosloskey Oh, 7330 –

Mundy Indianapolis Road –

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Kosloskey Indianapolis Road, Whitestown, Indiana. Is there a reason why Zionsville, if it's a Whitestown address why, why the hearings are taking place here in Zionsville?

Mundy Well, yeah, postal code zones are not necessarily the same as the municipality.

Kosloskey Okay.

Mundy We have Carmel addresses in Zionsville.

Kosloskey Hmm.

Mundy We have Whitestown addresses in Zionsville. We have Lebanon addresses that we, in Zionsville, so it, these are all places within Zionsville but they're, they're postal address is different.

Kosloskey [____ 12:00 inaudible] okay.

Mundy Yeah.

Kosloskey [_____ 12:03 inaudible] Well I appreciate your guys', everyone's time. Thank you very much.

Dale Give us a call. Thank you.

Kosloskey Yes, will do.

Dale Okay.

Mundy Thank you.

The next item is Docket 2022-56-DSV, S. Torgeson at 325 South Third Street, Zionsville. It's a petition for a Development Standard Variance to provide for an enclosed porch addition which exceeds the allowable lot coverage in the Urban Village Residential Zoning District (R-V). Is Mrs. Torgeson here? If you would come to the microphone please. From the back of the room if there are individuals who are in virtual right now would you let, let me know that and if any of them wish to speak on any of these petitions, I'd like to know that as well. Do we have any in there now? Other than Mr. Lake?

IT Sally Zelonis.

Mundy Okay.

IT [_____ 13:10 inaudible off microphone.]

Mundy All right. And Mrs. Torgeson before you start, one other piece of business – we do have one of the petitions which use, which used regular First Class Mail to give notice. We, our rules do require that they use registered mail but due to the pandemic, we have allowed the use of First-Class Mail so that people didn't have to sign for something at the Post Office or at their door and so I'd entertain a

motion to exempt the requirement of using First, using registered mail for the notices given.

Jones So moved.

Mundy Thank you Mr. Jones. Is there a second?

Postlethwait Second.

Mundy Thank you Mrs. Postlethwait. All in favor please say aye.

All Aye.

Mundy Opposed same sign.
[No response]

Motion passes. Thank you.

I'm sorry to keep you Mrs. Torgeson. If you would give us your name, address and what you would like to do in your, at your home.

Torgeson My name is Sally, legally named as Sarah, Torgeson and I live at 325 South Third Street in the Village of Zionsville. I moved in three months ago and moved here from California and what I'd like to do is put in a three-season enclosed porch, not heated, not insulated, not, no underneath it so I can enjoy the beautiful view of my trees year-round. I have cancer and I can't be out in the sun so I can't even enjoy the patio as it is so, and that's what I'd like to do. And I've sent everything to, everybody's gotten everything they were supposed to. It's sitting, it actually is being built on top an existing concrete patio but only taking a little bit of it so. It's no new ground coverage.

Mundy And the reason for the request for a variance is that you, your lot coverage will change, is?

Torgeson Yeah, yes but I still don't, I mean I am applying but I still don't understand how the lot coverage changes when the patio is sitting on top of a concrete patio that's already covering.

Mundy Okay. I'm sure that the staff report will inform you –

Torgeson Yeah, I –

Mundy And everyone else of what changes when that happens. Is there anything else you would like to add to that?

Torgeson No, but I really bought the house so I could build a patio. I mean a porch.

Mundy All right.

Torgeson I can't watch the rain in California so I wanted to watch the rain.

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- Mundy You may get tired of it.
- Torgeson Oh, I don't know.
- Mundy All right. Thank you. Are there any questions for the petitioner?
- Torgeson I have pictures if everybody hasn't seen them.
- Mundy Seeing no questions, do we have any remonstrators who wish to speak for or against this petition? Seeing none, could we have the staff report, please?
- Baker Yes. As the petitioner stated, she is wanting to do an enclosed three-season room over existing, over an existing pervious pavers. Her current lot coverage is compliant, just under the 37% ish. So in, in the Village, as I think most of you know, we allow for 35% lot coverage and then a 2% bonus for impervi, pervious surfaces. When the pavers get covered by a patio, that's no longer impervious so then it gets bumped back down to the 35% maximum lot coverage. So that's the reason for the request even though the lot coverage really isn't changing, it's just now required to meet the 35% since it's no longer pervious. With that said and the minimal request, staff is in favor of the request and happy to answer any questions.
- Mundy Thank you. Are there any questions for staff? Do you now understand? Okay.
- Torgeson I've never heard them talking about pervious versus impervious –
- Mundy Okay.
- Torgeson Stone.
- Mundy No, no questions for staff? Anyone online wish to speak? No? Okay. All right, given no questions is there a motion on this petition?
- Jones Do you have it? Do you have it up?
- Postlethwait I do. I move that Docket Number 2022-56-DSV, Development Standards Variance to provide for an increase of lot coverage up to 36.9% for the construction of an enclosed porch for the property located at 325 South Third Street in the Urban Residential Village Zoning District (R-V) be approved as presented and described based on the Findings in the staff report and staff recommendations, submitted Finding of Fact and substantial compliance with the submitted site plan.
- Mundy Thank you Mrs. Postlethwait. Is there a second?
- Pickell Second.
- Mundy Thank you Mr. Pickell. All those in favor please say aye.
- All Aye.

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Mundy Opposed same sign.
 [No response]

Motion passes. Good luck with enjoying the rain.

Torgeson Thank you.

Mundy You're a covered patio now.

Torgeson Thank you and I promise I'll make it look [_____. 19:04 inaudible]

Mundy Good luck.

Torgeson Thank you.

Mundy Next item on the agenda is Docket Number 2022-57-DSV, M. Godbout, 10703
Barrington Way, Zionsville, Indiana. Petition for a Development Standard
Variance to decrease the rear setback to provide for a swimming pool in the
Holliday Farms Planned Unit Development. Mr. Godbout here? Is that you?

M. Godbout This is my wife, Sandra.

Mundy And the wife?

M. Godbout This is my wife, Sandra. First, thank you for taking the time to hear this tonight.
We are coming to talk to you about decreasing the setback in our, in the back
yard. We specifically purchased this lot to put a pool in and, in fact, in our
building agreement with Sigma, we have a line item with a budget inside the
contract for a pool. So that being said, we've been planning this for, for quite a
while. We've met with Perma Pools for close to a year on this, taking a look at it,
how we're going to set it up on the lot. When finally we broke ground after
several delays in late November last year, the pool was pushed back a little bit
but. So, we talked through it, worked with Perma Pools, they came to the city of
Zionsville, received a building permit to put the pool in. Upon doing that, they
started to build the pool. We got a little ways into it and we had some people
objecting to the pool because of the setback. So I submitted the pool and all the
landscaping plan to the HOA or the ARB anticipating that the pool was fine, that
we just needed to get the, the landscaping signed off on around the pool. Part of
the reason why I bought the lot, it is on the golf course but we have a significant
amount of space behind us that probably 50 yards between the back of our lot to
the, to the number two tee box so there's a lot of greenspace behind there.

So, again, upon receiving the building permit from the town, from the city, these
guys had, had started the pool and then, so then we come to find out we need to
come and apply for, for the variance. We're about 16 feet from the back of the lot
so we're about 9 feet into the setback. So we're, we're looking for the variance
for those 9 feet essentially. We understand that the mistake happened with the
city on the, on the building permit but we've, we've moved forward with this and
we weren't trying to be malicious. We've been working on this for two years. We
weren't trying to sneak something in on someone and we feel like we're, we're
kind of left holding the bag right now and we feel like a variance would help us

get this project done. The pool is pretty much in. It's about 85% done so we're just hoping the variance will help us continue that project and get it finished up so.

Lake So I have a procedural question. If the Architectural Review Board hasn't approved your project, it doesn't matter what we say. You still can't have a pool.

M. Godbout We were never given any covenants by the builder, by the ARB, so that to us wasn't even on our minds. When they received the building permit from the city, we thought this thing is approved and we're good to go with it and all we had to do from a, from a vari, from an ARB standpoint was get the, the landscaping signed off on to for to plat to provide--

Lake Yeah, that, that's ultimately not my question though. I mean, ultimately, if we approve the variance, you still can't do this if they don't approve it. They have to approve it.

M. Godbout Well but that --

Lake They're the approval body. Not us.

Siegel Isn't that a separate question? We're here for the variance for the zoning then that is another issue that is something we need to discuss with the ARB at Holliday Farms?

M. Godbout Correct. That, that's a separate issue. So we're looking for the variance from you guys and then we'll worry about that after the fact.

Jones Well, no it's, it's not a separate issue. It's fairly standard in any current developed subdivision that there's a Homeowners Association or a Architectural Review Board and anything of this scale down to a swing set requires the approval of the Architectural Review Board before it moves forward. Without it, there's and, and what Chris is bringing up, there's no reason that this should be in front of us until you have the approval of the Architectural Review Board. Now, whether or not you got the covenants when you purchased the lot, once again, that's not our concern. That's a concern you should take up with the developer or maybe the title company or anyone else involved in providing the documents that are attached and run with your property. So until that's resolved, this really is not an issue for us to --

M. Godbout So how do you, so how do we get around the fact that you guys gave Perma Pools a permit to build? Zionsville presented them and gave them approval to build. There's a permit stuck on the front door of our house saying there's a permit to build.

Jones Well, once again, that goes back to an issue where for us to approve something we need to have correct information.

M. Godbout Then why did you --

Jones And it appears that was not provided.

M. Godbout But why did you approve it?

Jones Well, once again, you, it is your responsibility to provide the correct information. If we have now gone back later and found you did not provide the full documentation, it's not our mistake.

M. Godbout Why did you grant the building permit?

Jones Once again –

M. Godbout Without, if there was, if, if you didn't have all the information, we thought you had all the information. These guys provided you plot plan, they had their drawing, they showed the set, they showed the, they, they gave you all that and then you guys provided the permit to build which they did and now we're stuck in the middle of this thing.

Jones Based on incorrect information.

M. Godbout Okay, again, that's not our fault. That is a situation –

Jones It kind of is your fault.

Lake Well, it's your builder's fault. Your builder's responsibility is to understand what the setbacks are and to not build within the setbacks. And if he doesn't have that information, it's his responsibility to go to the developer and get that information, so your issue is really with your builder, not with the Town of Zionsville.

Siegel So where [_____ 25:49 inaudible]

Postlethwait And ultimately I would also say your responsibility because as a person who has purchased a lot in that area, I think it's contingent, it's contingent upon you to be able to understand what the rules and regulations are that surround that. And you can understand why your neighbors would be unhappy if you are bending the rules, so to speak, in order to, to meet your own needs when, in fact, they've signed on to the, to the covenants as they are written.

M. Godbout We're not –

Siegel So where, where, where are those rules located?

Postlethwait You should've gotten a copy of the covenants for the –

M. Godbout We didn't.

Postlethwait Holliday Farms area.

M. Godbout That's the, we didn't.

Postlethwait Well –

- M. Godbout So, and we're not, we're not trying to bend the rules here. We, we thought we were going through the correct process with these guys receiving the building permit from Zionsville. We thought everything was good, we're going to submit the, the landscaping plan to the ARB for that with you, with, with Zionsville signing off on the building permit.
- Lake So if your pool is within your contract with your builder as budgeted as you explained, and your builder is building in that neighborhood, it is your builder's responsibility, as he is generating, or his subconsultant is generating the site plan, to understand the setbacks. So he missed that there's a setback and put a, put your pool structure in the setback and that is his, it, it is legally his responsibility. Now, obviously, the title company should've provided those covenants as would've the neighborhood when you purchased your lot. That's standard practice. So, a bunch of other people missed this prior to it even getting to us and even if we approve the variance, you still can't build it if your Architectural Review Board does not approve it.
- Siegel Right but like –
- Lake And so –
- M. Godbout I understand that and, and, okay go ahead.
- Siegel I just wanted to understand where the rules are for the, like for the setbacks. If, if you're saying that they're in the covenants, I, I guess I would like to see the, where those are so that we know what they are.
- M. Godbout There's no mention –
- Lake And that's not our responsibility to provide those.
- M. Godbout There's no, and –
- Siegel Right but that, that's what – what you're saying that we need to have the approval from the ARB that you would not have anything to do with that but we're asking for a variance but you say you can't do that.
- Mundy What I think they're, there are some good points made here and we've, we believe that you need to know that even though if, even if we were to approve this, you still don't have permission to build that pool.
- M. Godbout Correct.
- Siegel Correct.
- Mundy Now, the, the, the developer should've provided that in some form or fashion, either them directly or – and that's, that's not our responsibility and we don't know what all of those covenants and restrictions might cover either so. And I, but I also believe that for this Board, I think part of the reason behind the staff's desire to have this come through the BZA at this point was that the town did make the approval of the permit to begin with and that that was done in error

without knowledge that the 25-foot setback was required because that typically for the town when they are looking at setbacks, an, an accessory, like a pool, would not be the same as a structure and so it was an innocent mistake on the town's part so I believe that that's part of the reason for allowing this to come to the BZA at this time. So, it, it sounds as though you are fully aware that if we were to approve this it does not assure you that you'll have the, the ARB's –

M. Godbout Right.

Mundy Approval to continue. That's a separate matter. We have nothing to do with that.

M. Godbout That is correct.

Mundy So, so I think just from a, this Board's stamp on it, I think that's part of the rationale that went into why are we seeing it tonight.

Jones Well –

Lake Can I, can I ask our attorney's position on this?

Postlethwait Right.

Lake And our, and our exposure if we approve something like this that doesn't meet their covenants?

Chadd Yep. I think the timing of this is a little different but this isn't really a new issue to us. We see variances come in fairly frequently where the petitioner would then have to go get approval of the HOA to proceed, knowing that our approval really doesn't get them there. Like I said, the timing is a little different because they've already started this project but you're absolutely right that our approval is only, only gets them halfway there. If they don't get the, the Homeowners or the ARB's approval, they can't proceed with the project. We sometimes have issues come up, I guess, where we have a little bit of a question should they come to the BZA first or to the Plan Commission first – similar issue here. They need both approvals, here it just happens to be the HOA and not the Plan Commission, I suppose. They, they've submitted a request, they filed their petition. It is a valid petition and I think the Board needs to take action on it. My recommendation would be to treat it just as you would any other. It's a request for a, a, a setback variance from the standards of, of that development. Whether they have or ever get the Homeowners Association approval isn't extremely relevant – to us. It's very important to them but so much to us –

Jones Yeah.

Chadd in deciding the variance.

Jones The other piece I'd like to point out – there seems to be a lot of discussion as to where do you find this information. If you look at the plot plan supplied with the house and the pool, and if you read down to the bottom dead center in the middle it says zoned subsection E – zoning 8-foot minimum to 20-foot separate side, 25-foot rear. So the information is actually clearly on the drawing. The problem is, it

is not then actually applied to the drawing but still it, it's, once again, this is, this is the drawing and a detail that should've been approved by the Architectural Review Board before it even gets to us. That's the way every neighborhood is set up, that's the way the covenants are set up, that's the way – and if they're not familiar with the process and their builder isn't familiar with the process and the pool builder isn't familiar with the process, there's a whole lot of people failing here before it gets to us and because everyone else has failed is not a reason to grant a variance or even particularly hear it. My first motion would be is that we continue it until they get approval of the Architectural Review Board and work it out with Holliday Farms. It should not be on our docket.

Mundy Any other questions, comments, discussion among Board? I would suggest that we hear the staff report and understand the staff's position before we get to a motion. Is there anyone here who wishes to speak for or against this petition? Yes sir. If you, if you would come up. Mr. and Mrs. Godbout if you would, you can take a seat and we'll allow others to input for us. Could you give us your name and address please.

Koski Well thank you. Obviously, thank you to each of you. This is Mark Koski, 3649 Dartmoor Way in Zionsville, Holliday Farms. Thanks to each of you for your, your good work, obviously a part of this commission. To me it seems pretty cut and dry. It comes down to this. The Town of Zionsville, obviously, signed off and approved the building of the pool. Step one. That was already mentioned. The family went ahead and put a lot of money into, into this pool, had it done. If there's a change to that, that's on, that's on the town. We as the people of Zionsville trust you all to make the right decisions. You do it all the time. So, thank you. We're in the process of looking for a pool now ourself so if all of the sudden we put something through and you all approve it, we start the process and then six months later we've got to come back here and justify the process, I don't think that's right in my opinion. I mean, it comes down to this group here, we elected you, we all approve, we thank you for what you do. We need you all to act on our behalf because this is, this is what you all do. This is, this is a great thing that you all do as a service and we appreciate that. So we lean upon you all. We don't know this, this world – you all do.

With that said, I think this is a cut and dry one. Holliday Farms, hey, we can go back to the developer all day long – there's all kinds of issues there. I mean there are fences in Holliday Farms that have been approved for some people. A lot of people are not being approved. There's so many back and forth with the Henke Development Group that I've got questions on – I think we all do. They approve things, they don't approve things based upon the dollar that they ultimately receive and that's a problem, in my opinion, and that has really concerned me but, again, we lean up you as the leaders. You have granted this, it should be granted. Thank you sir.

Mundy Could I get some background? Are you with, are you here as an individual who lives in Holliday Farms?

Koski Correct.

Mundy And, so –

Koski Yeah, I saw this on the docket. My wife and I are in the process of looking at a pool and it concerns me that if they've gone, go, go through this process why do we want to put money into a pool that ultimately might not happen?

Jones So are you aware that there is a Architectural Review Board and there's certain covenants that run with your property?

Koski Correct, but I'm also aware that you all –

Jones Are you aware of it?

Koski As leaders –

Jones No.

Postlethwait No.

Jones Are you aware of what's involved with the property you own?

Koski Here's the thing – if we want to get into the Henke Development Group, I'm really happy to do it.

Jones No, no. I'm talking about the property you own. Are you aware there's an Architectural Review Board and that there's covenants tied to your property?

Koski Our, our builder should lead us through that process.

Jones Are you, you –

Koski No I'm not.

Jones You're not?

Koski No I'm not. I lean upon you as leaders.

Jones So when you bought the property and they handed these documents over, you didn't give that any mind.

Koski I would think the, the Town of Zionsville –

Jones The town isn't involved in the closing of your property and the purchase and how you spend your money and how you spend your time and the amount of due diligence you do prior to doing that. My question is did you do any due diligence on your lot that you purchased?

Koski I lean upon the town to make, make the approval.

Jones No, no, no. It's not –

Koski You all approve things and we go, we go with it –

- Jones All right.
- Koski From there.
- Jones The final thing I want to bring up is that on July 26th it appears that Phil Sundling of Henke Development was sending notes back to Mr. Godbout telling him that the, the pool was encroaching in the rear building setback line but if I'm hearing correctly, the Godbouts proceeded to dig that pool after receiving this information. I guess I need to ask – right over there, Mr. Godbout if that is, is that a correct statement? Is the email chain in here correct?
- Godbout The –
- Jones Please – to the mic.
- Godbout Phil and I were, Phil Sundling and I, again, this, this all occurred after the permit –
- Jones Once again, the direct question is –
- Godbout The email was –
- Jones Is the email chain –
- Godbout The emails went back and forth –
- Jones That we are seeing correct?
- Godbout I'm answering your question –
- Jones Okay.
- Godbout I'm answering your question. So the emails went back and forth and I sent Phil, again, I, we thought that this thing was approved from you guys. So at that point I sent Phil the landscaping plan from Fritchey Landscaping for the, for the landscaping around the pool. He came back and said, he said you're, this doesn't look, it looks like you have 30 and then into the setback. And I'm thinking, we'll we got 16 feet back there. It never crossed my mind that 30 feet was even in the remote discussion. I was thinking 2-½ feet, 30 inches. I was not even thinking 30 feet. So, I was thinking we got 16 feet behind the pool, we're in good shape and these guys like, and Daniel and I talked and we put 20 pools in here, we've never had this issue. This is fine. We're going to, this is fine. I said okay and so we relied on that and we moved forward. So –
- Jones But you were given notice prior to sticking a shovel in the ground that there was some concern about where this pool was located.
- Godbout No, the shovel was already in the ground.
- Jones I said you, you pulled the permit on the 18th of July?

- Godbout I didn't pull the permit. I didn't apply the permit. These guys did. I, I did not apply for the permit. Perma Pools applied for the permit.
- Postlethwait So just one comment about relying on the town folks – and, and we understand that this is not something that is in everybody's lexicon but we also believe that the homeowners have a responsibility themselves to know on their property what the rules and restrictions and the ordinances, ordinances are for that property. And it's not up to us to do the research on your property to tell you whether you are going to be, whether you're going afoul of those ordinances or not. It is your responsibility to know what the covenants are for the area in which you're living and also what the process is that you have to go through first of all in your HOA before you present something to the Board of Zoning Appeals for a variance if it's needed. That's not on us to, to be the arbiter of that. That's on the individual who is responsible for the property that they own, so.
- Godbout So why would you, why would you do your due diligence –
- Mundy I'll ask you to come to the microphone if you're going to –
- Koski Thank you for that. I do appreciate that and how you handled that. But why wouldn't you all as the leaders – I mean, if you approve something then we the townspeople believe in, in you all and what you do so if you approve something then we believe that. I mean, I have a hard time believing anything Henke comes out with – let's be honest – so, we believe you all. You did your diligence, you approved it and then this family went forward. That's where I'm struggling.
- Postlethwait Obviously, it's, this body didn't approve what you're talking about. This is not the body that –
- Koski But the city, the town did right, I understand.
- Postlethwait And to be clear, I mean that was done by staff which I, my understanding is, didn't have the full information on the document that was given to them.
- Koski Thank you. So why is it this family's fault that the city didn't or the town didn't have the information?
- Postlethwait Because you are responsible for yourselves. That's why.
- Mundy The town does not have all of the covenants and restrictions that cover the dozens of developments in, within the town. That is not what makes up the ordinance that the town uses. Those are yours as a homeowner in that development. That is not what this Board uses.
- Siegel I just want to kind of bring back the conversation of why we're here and focus on we're – our ask is to have the variance for the zoning. What, what we are to be discussing with the ARB and work that out, that is part two of this. But today, tonight our ask is to have the variance for the zoning from, from the town.
- Mundy Thank you. I think we –

Siegel And I think we understand –

Mundy Yes, so I think we understand that and I think we have now mixed the presentation with the –

Siegel Yes.

Mundy Remonstrator. We have another remonstrator who is here. I'd like to have him be able to speak as well. Yes sir, if you would state your name please and your address.

Weber Yes, it's Brad Weber. I live at 10683 Barrington Way, Holliday Farms. Well, first of all, thank you for allowing me to speak tonight. And I'll be honest, I, I didn't want to be here tonight. And, unfortunately, I did not want to start my relationship with my two future neighbors [_____] (42:19 inaudible) this way because I am one of their neighbors that backs up to their house. I am also disappointed to say that although I reached out to Henke, they declined to send a representative tonight. I also reached out to their attorney, Daniel Coats, and they declined to attend tonight rather just sending emails so I felt no choice that I need to speak up myself. When my wife and I chose E27, I'm going to give you some background – that's the lot directly west to Matt's lot. We selected that based on location and the view of the first and second hole. These home [_____] 42:55 inaudible] lots were carefully designed to maximize the, the view of the golf course and I would argue that by violating the setback it does have a negative effect on our property values, especially when you add in the fact that there will be landscaping around a pool, it will obstruct our view and that's why also the neighbors on the other side of their lot, Ruth and John Twenty, also oppose this variance and you should see in your packet a letter that I forwarded to you to that fact. They were unable to be here tonight because they are out of the country on vacation.

In speaking to the covenants and the restrictions, I, I do think they are clear and I can't say what was discussed with their builder, although, interestingly, we, we had the same builder. We had Sigma Builders. Our situation was we also considered placing a pool and it was obvious to us that the setback was 25 feet. If we placed a pool, it would be very close to the back of our house. We opted not to. Now our arrangement, again, sounds different than theirs, our arrangement with Sigma was to build the house. The pool would be a separate project. And I'm not saying that Matt and his wife, Sandra, can't have a pool. They're the homeowners, they own the house, the property. And, and there is room to put a pool back there. We're simply saying you need to abide by the rules of the Architectural Review Board. And, ultimately, it is the homeowners' responsibility to know those rules.

Now this case, this controversy, never should've gone this far. And I'll agree with the, the comment by the representative in the back but there were two critical problems with this. And the first starts with the building permit by the city of Zionsville. It never should've been approved. This was an incomplete application. On the application specifically there was no rear setback line or number put in and it's 25 feet. Secondly, if you go back to the initial PUD

ordinance Section 20 controlling developers consent and I'll quote "No developer, user, owner or tenant may obtain any permits without the written consent of the controlling developer" which is still Henke. There was never any written approval. I also enclosed that chain of emails that go on between Phil Sundling and Matt, that going back as early as, to summarize:

July 26 – the pool is not approved;

August 11 – the pool is not approved;

August 23 – the pool is not approved;

August 31 – the pool is not approved;

September 5 – the pool is not approved.

So clearly, Matt and Perma Pools knew this pool was not approved but they rushed it through, they continued construction. Finally, around September 9th and I'm not sure on that exact date because I was out of town, Henke actually sat down in person and informed them you need to cease construction, now that it's 85% done, because the pool was never approved.

I also find it somewhat interesting with their variance they're asking for 16 feet. Again, we're talking the pool should be 25 feet from the back of their property. They're asking for 16 feet. Now I've not taken any measurements, I haven't gone in their yard, but, but Henke took measurements and told us they'll approve the pool but it has to be moved back 12-1/2 feet, not 9 feet, 12-1/2 feet. So even their, their variance of 16 feet doesn't even make them whole on this subject and the reason for that, if you look at the plot, their land is not a perfect rectangle. It slopes in on the east side so that the west side of their yard is 146 feet, the east side is 141 feet, which means that the corner, the southeast corner of their pool is only 12-1/2 feet from the border of their yard. So it's not even 16 feet. Again, it gets back to if you put the pool in it can't be 9-1/2 feet or 16 feet or 12-1/2 feet, it needs to be 25 feet from the back.

Finally, upon reviewing the, the materials for this petition, my wife and I discovered that Perma Pools made notice to public hearing via certified mail. What's even more interesting is that the certified letter to us came to our old address in Carmel. An address we haven't lived at in over 15 months. I've spoken to Matt. My wife has specifically spoken to Dan Majestic, the representative for Perma Pools, so they know we're their neighbors. We live in Zionsville next to them but yet our certified letter went to an old address in a house that we haven't lived in in 15 months which I feel is somewhat suspicious activity. But in conclusion, I would just respectfully ask that the Board deny the petition for the variance because this variance is opposed by my wife and I, it's opposed by the other neighbors, Ruth and John Twenty, on the other side of them and it is opposed by Henke Development. Thank you for your time.

Mundy

Thank you Mr. Weber. Are there any questions for Mr. Weber? I have a couple if you don't mind –

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- Weber Sure.
- Mundy The covenants and restrictions, were those provided to you when you purchased your lot or how did you get them and what's the process?
- Weber So, we very when we bought our lot, we bought it [____. 49:04 inaudible] And when we purchased the lot, that information was given to us from, directly from Henke and it was very clear. In fairness to them, I don't know if they were given that, I don't know if the, the, the builder didn't provide that but it was provided to us when we bought the lot from the lottery. And like I said, we very seriously looked at putting a pool in too but the variance was very clear. It's on all the plots, a 25-foot setback, category section E homes, we didn't think a pool would fit in our yard.
- Mundy All right. Thank you. The second question is did the Henkes give you a reason why they would not have a representative here since they have, I mean, they've shown through at least email and perhaps otherwise that they were, the ARB has not approved this but I, I thought they –
- Weber They did not give me a reason. I spoke with Phil Sundling and also Brad Henke. They said at this point in this controversy they've turned it over to their lawyers, Dan Coots. When I contacted him, he said that he has sent an official email to you which is enclosed in your packet and he would not be present.
- Mundy Okay. Thank you. Any other questions? Thank you Mr. Weber. Is there anyone else? Yes. You wish to speak to this petition as well?
- Majestic Yeah, that'd be great.
- Mundy Okay. Name, name and address first please.
- Majestic Sure. My name is Dan Majestic. I own Perma Pools.
- Mundy Okay.
- Majestic So, a couple of things – I asked my son, he does all of our permitting and we're, I, regarding your, your alls address as to how those things actually, actually come about, we actually reach out to Boone County. They provide us actually the addresses. We actually don't, we apologize if you didn't get the mailing. You should probably go and look in Boone County. They would actually have your old address so, so that's actually how. It wasn't our intent actually of not including people in the process and so and, and, and I want to, my eyes are getting bad –
- Mundy Jones.
- Majestic The young lady back here.
- Mundy Postlethwait.
- Postlethwait Thank you. That's the nicest thing I think anybody has said to me in a long time.

Majestic I guess what I would tell you is, is that I know when you were saying – because we, we build, this year we’ll do about 175 or 180 pools here in the I’ll say Indianapolis area, probably maybe 25 or 30 pools here within the Zionsville market. I guess what I would tell you is that most of the homeowners that we actually work with, unfortunately, they buy a house and they really don’t know kind of like their property restrictions and some of those things. We do try to help them and there’s many times that there’s customers that are really disappointed where they, they can’t fit a pool or they have some issues. So, so, unfortunately, I think when people are actually going out and buying houses they’re just looking at the house and they’re not looking at any of the area around the, the home itself. I would also say my son does the, the permitting for us as far as overall and I have a copy – do you guys, do have copies of the permit itself?

Daniel The site plan.
Majestic

Majestic Or, or, or the site plan?

Mundy Is that the one that’s labeled “plot plan” in the top righthand corner?

Majestic Yeah.

Daniel Yes.
Majestic

Majestic I would say that one of the things that maybe Zionsville or whoever, we don’t necessarily – I want to be upfront – we don’t necessarily know the, the HOA covenants at all as far as when we’re submitting the information, all we’re really looking for is does the, does the pool fit within the easement or any of the other restrictions that are actually listed here on the plot plan. So I, I, we, we historically don’t, customers don’t come to us with an HOA packet or something along those lines. For us, what we try to do with the homeowner is we actually try to get the, obviously, the permit as far as within the Zionsville market or any of the markets. One suggestion that, that I would encourage you guys to, to prevent this going forward would be in Car – I’ll use a neighboring community for you guys – in Carmel the way it works and so, so every place that we build pools in today, kind of positions it as to the, the permit is done within like say Zionsville. The homeowner is then responsible for the HOA on, on their own. We, we encourage the, the homeowners, obviously, to get their HOA approval but Carmel is the only one actually that when you apply for a Carmel permit, they won’t actually issue us a permit until the HOA has actually approved. So, so one thing, if you, if you want, if you want to think about a way to prevent this going forward, I’m just trying to think about it going forward, one of the, one of the measures that I would clearly recommend for you guys is, is, is enacting a process that, that we can submit the HO pap – or submit the permit to you, it sits there until you get the HOA approval from the, the Board and then you then grant us the permit. That would be one way actually to, to solve this kind of a, a problem going forward.

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Dale Another process would be where you, serving your client, make sure that they would obtain that information before you apply for a permit.

Majestic Obtain?

Dale Obtain of the HOA a letter –

Majestic Yeah.

Dale You talk to your client before –

Majestic Yes, yes.

Dale They apply for the permit.

Majestic Yes. Absolutely. Yes.

Dale Yeah.

Jones Mr. Majestic, I got a quick question – so you’ve built some pools up in the Holliday Farms area?

Daniel
Majestic Yeah.

Majestic Yes.

Jones You’ve already built some pools up there?

Majestic Yes.

Jones So then the plot plan provided by True North, you’ve worked with these individuals before?

Daniel
Majestic That was provided by the builder. That plot plan.

Jones Did you use this plot plan to acquire a permit?

Daniel
Majestic Yeah.

Jones Are you used to looking and working with this document then regardless of who provided it?

Daniel
Majestic Yeah, but I don’t know why there’s not a 25-foot rear on the plot plan. Why would--

Jones It, it states it on the plot plan.

Daniel Majestic I understand but wouldn't you guys before you approved it look at that 25-foot –

Jones Wait a minute. No, no. My question is about your operation. Not ours. You just stated a few minutes ago how you work and help and blah, blah, blah – why did you not pick it up?

Majestic Yeah, yeah. I, I don't know how we missed it to be honest. No different than how Zionsville missed it as well, so.

Daniel Majestic [_____ 55:56 inaudible.]

Majestic So, so, so I –

Jones Wait a minute – but you are the expert at putting in pools. Not our staff.

Majestic I would say – we're, we're, we're an expert as far as building pools. And try, and I wouldn't say that we're an expert in getting things approved as far as for the permits. I mean, I think we work with them –

Jones Okay.

Majestic On a very regular basis but I wouldn't say we're an expert in it.

Jones I'd like to make a motion.

Unknown speaker [_____ 56:33 inaudible off microphone]

Mundy Yeah, let's, let's – if also haven't asked if there are any online –

Jones Oh, sorry.

Mundy Remonstrators.

Jones My bad.

Postlethwait And the staff report. Can we have the staff report?

Mundy And the staff report as well. Yeah.

Jones I'd still like to go ahead and make a motion now though but if we, you want to do all that, that's fine.

Siegel I just, so I just wanted to make some comments based on Mr. Weber's testament. I, uh, he had mentioned that the, the property value concern. We actually got three references that show that property value increases with pools by average 8% so we have that with us if you need to see it. The landscaping does get approved. I don't think that anything that we were planning for landscaping

would obstruct their view. Their setup for their, their lot is very different than ours as far as the land that goes behind the property line. So where the cart path goes directly behind their lot, the cart path is way further behind by –

[
M. Godbout [_____ 57:39 inaudible off microphone]

Siegel We have pictures of, of what that looks like and I also just want to make a comment about, about the –

M. Godbout This is our lot.

Mundy Okay. Thank you.

M. Godbout [_____ 57:54 inaudible off microphone.]

Mundy All right.

Siegel I just want to make a comment about him speaking on behalf of conversations that he wasn't involved in and just to kind of see that as not being appropriate. Also, the accusations of defamation of character is not appreciated either and, and really not appropriate in this forum. And also wanted to say it's confusing to me why someone would say we're trying to pull, pull one over and rush something in when this is not a situation that we want to be in. We're both professionals with very stressful jobs. We really don't need the extra stress. We just want to have a nice house and favorite place with a nice pool from where we were trying to plan on, so. Thank you.

M. Godbout And I, I'll add and Weber for being here. We look forward to being good neighbors but I was, you know, I, all, all the information that was submitted is online, right on the site and for Brad to, to say "and yet he lies to Perma Pools and says he got approval to falsely apply for the permit" – that's, that is an attack on me. I didn't lie to anyone. These guys can attest to that. I didn't apply for the permit. I did not lie to them. There was – this has been in place for a long time. These guys applied for the permit and for him to come at me and send this in to you guys to say that I lied to, I lied to Perma Pools to get an approval, a false permit is, is, is – I, I take a big offense to that because it's an attack on my character so I do not appreciate that personally.

Second, in regards to the pool itself, one more thing, I spoke with – when all this started coming to a head, I spoke with Mike Lathrop. I said Mike, I said what is going on. I said now we're being told by the ARB that this is not approved. You guys, the city approved this and gave us a building permit and they started to build. I said if we stop building now, in talking with these guys, the point we're at, we're 85% done, we risk compromising the concrete floor and everything else moving forward and Mike said to me I am not putting a stop build on the pool. You guys continue to build, verbatim on the phone. So we continued to build at that direction. So, the ARB stuff aside that's one thing but when we got direct, a direct, directive from Mike to say "I'm not putting a stop build on the pool, you guys can continue to build," we continued to build. So everyone thinks we're trying to pull a quick one here and just push this thing through – that's not the case. So, it's just frustrating for me. I'm sorry I'm getting a little worked up. I'm

like this all the time, now I'm, I'm, I'm just frustrated with the process. And all's we're looking for is a variance on this so then we can go to the ARB and try to get this thing approved. That's all we're asking for.

Mundy Mr. Godbout, I don't think that any of us believe you're trying to pull a fast one. I, and I don't think anyone has said anything which that was the, the, the basis for what they said. So, I, I, I understand frustration but, but I don't think that you have anyone here that's believing you're trying to pull something over.

M. Godbout And, and I'd like to point out one other thing – in regards to the letter that was sent by the couple that's not here – if you stand in my pool and look at the brick wall and the patio that they built to the back of their house, it stretches further into that back setback than our pool does. So I don't know if they got a variance. I don't know how that was approved by the ARB but there's truly a setback there and we're trying to follow here. If you stand in my pool and look at their big block wall – I've got a picture of it – it is well into the setback.

Dale If you could speak into the microphone please so those transcripts are all heard.

Mundy Yeah.

Dale Thank you.

M. Godbout So I've got to say and our neighbor who, who the letter says they're being asked to do this. So someone is asking them to do this letter. So, they're – I don't know if they're really that interested or not but someone has asked them to put this letter together. So, I, I would hope that that was approved or there was some sort of variance granted to that but that whole back patio is well into that setback and, like I said, I'm hoping there's a variance there or that it was approved by the ARB because, they're, in reading of the description of a pool, deck, patio, whatever, they all kind of fit in the same category as far as what needs to be in that setback. So, that's, that's all I'm going to say.

Mundy Thank you.

M. Godbout Yeah.

Mundy Are you wishing to respond, Mr. Weber?

Weber If I could just make one quick comment –

Mundy All right.

Weber I know you're running over time. I would just like to apologize to Matt for my poor choice of words when I said that he was lying to get the permit. I should've used a more appropriate phrase such as was inappropriately approved and for that I, I apologize.

M. Godbout Thank you.

- Mundy Thank you. Is there anyone online who wishes to say anything about this petition?
- IT No.
- Mundy No, okay. In fairness, I think we should have the staff report.
- Baker Yes, thank you. I'm going to run through this since this isn't a typical request, kind of the history of it here. A lot of it was kind of touched on in pieces but I want to get the clear overview here. The permit was approved, the pool permit was approved or, I'm sorry – was issued on July 18th of this year with the 16-foot setback, which is all, provided in your packet as an exhibit. Obviously, based on the plot plan, it wasn't clearly indicated what that rear setback was and that's kind of, probably where the error and approval came from was not having the clearly indicated line of the rear setback. So after the pool permit was issued and I'm, I'm assuming construction had begun, our department was notified of the issue at hand, what, what's the setback. So after research we went back, we realized that the pool was, got approved for 16 feet but the setback really is 25 feet so Perma Pools and the owner were notified of this issue and were told to request for a variance retroactively from you all and also recommended to proceed with getting HOA approval. And just to reiterate, that our department does not require HO, HOA approval when permitting as we don't enforce the covenants and restrictions. So given all that, oh, one more point – the setbacks are shown on the plat. I don't know if they're in the covenants or, or what, but the, the rear setbacks are indicated on the plat. So given all the information stated above, the mistake on the town's end, the pool not encroaching towards existing residential lots but towards the golf course, and how the town traditionally looks at accessory structures in different zoning districts, typically we allow for encroachment of accessory structures such as pools into rear setbacks so with all that said, staff is favorable of the variance request and happy to answer any questions.
- Mundy Are there any questions for staff?
- Lake Has Mike –
- Jones When you say we do – go ahead Chris – go ahead.
- Lake I was going to say, has Mike Lathrop verified how close to the property line the pool is because it sounds like even the 16-foot variance won't accommodate the pool in its current condition?
- Baker From what I understand, we have not verified – I don't, I don't know if we typically measure off that but from what I understand, it's 16 feet from what the plot plan that's been provided to us shows but I'm not aware of anybody on our department verifying that.
- Lake And if we approve 16 foot and Mike goes out there and it's less than 16 foot, we're going to see this petitioner again.
- Dale That's correct.

- Lake Okay, so.
- Mundy It does look like, when you look at that plot, the, the rear portion of the accessory there is not parallel with the property line. So, we can't tell from this drawing, I can't tell anyhow, if it's 16 feet at one end and 12 at another or not but –
- Lake But that is pertinent to the issue at hand and so to even request a, you know, everything's been done wrong to this point and then to request the petition that doesn't even solve the problem is, is another indicator that somebody's not paying enough attention to this and not doing their job and they're asking us to make their lack of doing their job right and I have a problem with that.
- Postlethwait I agree.
- Jones I have a quick question – you say we do on occasion grant variances encroaching into rear setbacks – is that correct? Is that what you said?
- Baker I'm sorry – let me clarify. I think, my, my point was in different zoning districts we allow – I'm just going to give an example here – a pool let's say in the Village – we allow accessory structures what would include pools, to go 5 feet in the rear setback when the principal building can't be more than 20 feet.
- Jones Okay.
- Baker So with Holliday Farms, it's a little bit different –they have one setback for all structures, whether it's an accessory structure or it's part of the principal building. That was the point I was trying to make.
- Jones All right. And then, and if we were granting a variance for a rear setback in an area that had a HOA or an Architectural Review Board, would those organizations still have to sign off on our variance?
- Baker No.
- Jones The other item is – as I went through the, and this is after we get through this there's something I'd like to bring up as part of the New Business, but specifically to this development going through that, there's 10 subsections laid out in here. So, in other words, and, and it's, it took me a while to even figure it out. As you're going through the plats, each plat has like a little octagon and maybe it's colored in or maybe it's got a line through it or there's a star or – it took a while to figure out what the heck I was looking at and that's basically the way they, they cross reference back to this ledger that they put on here. One of the more interesting things about this ledger is it also calls out that there's certain lots that enjoy at 10-foot rear setback.
- My motion, even though I'm not making a motion at this time, but if I were to make a motion, it's still going to be along the lines initially of a continuance to allow Henke, if they so see fit, to find a way to make an equitable solution not only for these individuals but the adjoining property owners and we wouldn't be here granting a variance and I think that's well within their rights to review and

adjust their multiple subsections. Once again, if I understand the way it is set up, currently, they are the only vote when it comes to the HOA and the ARB at Holliday Farms so it's entirely within their jurisdiction to make a correction that they could then approve this through their ARB and it wouldn't even be in front of us. Am I, am I out of, out of bounds with what I'm throwing out?

Dale Right. Because the standard –

Jones Right, I'm out of bounds?

Dale You're not out of bounds but the standard here is 25 feet and we can't defer that decision to the Architectural Review Board. The town still has to grant the, that setback. So even if the Architectural Review Board were to grant something less than 25 feet, it doesn't absolve the town from having to, to also approve that.

Lake And that's because it's in the PUD.

Jones So the town would then have to adjust. Hmm?

Lake It's because –

Jones Yeah.

Lake The setback is part of the PUD.

Dale Right, yes.

Lake That's why. It's also part of the covenants potentially but it's part of the PUD which is why we have to approve it as well.

Jones Which is one of the pieces I was going to go back and check to see. Did we actually approve this as part of the original PUD?

Dale The setbacks were.

Jones Were they? This schedule was all part of this? Okay. I just, like I said –

Postlethwait So it seems to me that part of the issue is sequencing here and I think Mr. Majestic had a really good point about having the HOA clearance first before anybody applies to the town to get a building permit on a pool, particularly if there's some question about setbacks and so on. So it seems to me that perhaps the best strategy, and you can tell me if I'm out of bounds, would be for petitioner to go back to the HOA or the ARB, get whatever approval or make whatever arrangements they can make and then if they do need a variance, come back and get a variance. I, I think we're out of phase here. I think we're not in the right, we're not in the right place in the process is, is my view so.

Mundy Yeah I think this that if, if nothing else that's one thing that's been pointed out here is that this should not happen again, we should have a system that avoids this so.

Postlethwait Right.

Jones And this goes back to legal and Mike, you guys down there, so once a subdivision or a PUD is created and we approve it, I guess we can still go back and grant variances that change it because we are kind of a semi-judicial body.

Chadd Correct. The PUD just lets them set their own standards rather than the standards normally in your zoning ordinance. They, they set their own through the PUD. If they then want to vary from those, it's the same process.

Postlethwait So if we were to grant this variance, they would not require the approval of the ARB of Holliday Farms?

Chadd They still would. They still would.

Postlethwait They still would?

Chadd Yes.

Jones And if the ARB doesn't grant it, what's?

Chadd It takes both. This is one of those situations where it takes both.

Postlethwait Oh.

Chadd So you, you can approve it but without the ARB, they, they still can't proceed.

Jones But you just said we can override them.

Chadd No, no, no. You, you can grant variances to what your town ordinance says. The PUD is an ordinance of the town that we can, we can grant variances to. The covenants and restrictions internally we, we can't and, and I think that's what Mr. Lake was alluding to.

Lake Correct.

Jones All right. I'll still make a motion. Is that okay?

Mundy There are no questions of staff? We've cleared any questions of staff? Seeing none –

Jones I move that Docket 2022-57-DSV for the property at 10703 Barrington Way, Zionsville, Indiana 46077 be continued until the petitioner can acquire the approval of the Architectural Review Board for the Holliday Farms Development, from the Holliday Farms Development.

Mundy Thank you Mr. Jones. Is there a second?

Postlethwait/
Lake Second.

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Mundy Were there two seconds that? Thank you Mrs. Postlethwait. Was that an echo or was that Mr. Lake?

Lake No, that was me.

Mundy Okay. All right. Any further discussion among the Board? The motion is that Docket 2022-57-DSV be continued to the December meeting or until the matter is heard by and decided upon by the Architectural Review Board for Holliday Farms. Any additional discussion? Can we do a roll call vote, please?

Dale Yes. Ms. Postlethwait?

Postlethwait Aye.

Jones Quick question – I'd like to make sure I amend my motion for the language that Steve said.

Mundy I thought I got it pretty close but maybe not –

Lake No, Steve, you added or the December meeting.

Pickell Yeah.

Jones No.

Mundy I, well I said December or –

Lake Yeah.

Mundy Until –

Jones Steve added “decided upon.”

Lake Mmm.

Jones I said “approval.”

Lake Yes.

Jones So I'd rather go with his “decided upon” language and modify mine, my motion.

Dale [____ 1:16:21 inaudible]

Jones Should I try to restate my motion?

Mundy All right.

Jones You can ask me to remember that?

Mundy Why don't we for the sake of the person who is going to have to put this in the minutes, let's have a clean motion –

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Jones All right.

Mundy So if you would restate it Mr. Jones.

Jones I move that Docket 2022-57-DSV for the property located at 10703 Barrington Way, Zionsville, Indiana be continued until the Holliday Farms Architectural Review Board has the opportunity to act on or decide upon the requested variance.

Mundy Okay. The motion has been restated by Mr. Jones. Is there a second to that motion?

Pickell/Lake Second.

Mundy We have a second by Mr. Pickell. Let's do a roll call vote if we would please –

Dale Yes.

Mundy Mike?

Dale Okay. Ms. Postlethwait?

Postlethwait Aye.

Dale Mr. Pickell?

Pickell Aye.

Dale Mr. Lake?

Lake Aye.

Dale Mr. Mundy?

Mundy Aye.

Dale Mr. Jones?

Jones Aye.

Dale All approve.

Mundy Thank you. The motion is continued. It will require the action of the Holliday Farms Architectural Review Board. Once that is done, then this body would review that on the next docket whenever that occurs.

M. Godbout So you didn't decline the variance, correct?

Mundy If you, if you'd like to –

- M. Godbout You're not declining the variance, you're just, you're now making this one big issue and putting it back on the ARB?
- Mundy We are continuing the vote on that decision on the, on whether to deny or approve that variance.
- M. Godbout So essentially you're saying if the ARB agrees, you guys most likely will grant the variance?
- Mundy Well we didn't say that but what we said we would, we would once that conclusion is reached by the ARB then we would hear the motion, hear the petition –
- M. Godbout Yeah.
- Mundy Knowing that.
- Lake And I would also request that you verify your actual setback that you need and that it match what was requested. We don't want to hear this twice.
- M. Godbout Gotcha. Thanks man. He's, he's saying we gotta verify the 16 feet.
- Mundy He is suggesting that given what we heard tonight that, in your best interest, you'll want to make certain that what you are requesting is sufficient.
- M. Godbout Correct, I get it, yeah, yeah.
- Mundy Okay. All right. Good enough.
- M. Godbout Yeah.
- Mundy But thanks for your patience. I, I know that your personal integrity might've been hurt here and it was no intent by anyone on the Board to do that. That was not our intent. Our intent is to make certain that we're doing what this Board is supposed to do, so.
- M. Godbout And I want you guys to understand that there was no intent on our part to put this pool in and, and shove it down everyone's throat and get it done. That we thought we were going by the, the, we thought we were going through the right process and when we were granted that building permit from the town, we thought we had the greenlight. And then, again, when I called and he said continue to build we're not putting a build, stop build on it, I thought we were okay. So that's why we continued to go with it. So, there's just a lot of balls that have been dropped here and we're stuck in the middle of it and now we're, we've sunk a lot of money into this thing that these guys put in and now we're trying to figure out how to resolve it and it just sucks for us because we're in a, we've been put in a spot that we shouldn't be in.
- Mundy Yeah, I understand. Thank you.
- M. Godbout Thank you.

Mundy Next item on the agenda is Docket Number 2022-59-DSV, S. McCanna, 1085 Starkey Road in Zionsville, Indiana. It's a Petition for a Development Standard Variance to provide for an addition to a single-family dwelling which: 1) Exceeds the allowable lot coverage. 2) Deviates from the fifty, required fifty (50) foot side yard setback. 3) Memorializes the establishment of an existing 1-acre lot where a minimum lot size is 5 acres. 4) Memorializes the establishment of an existing lot width where the minimum lot width is 250 feet and 5) Memorializes the establishment of an existing lot frontage (minimum lot frontage is 250 feet) in the Urban Open Land Zoning District (O-1). Mr. Andreoli, are you going to tackle this?

Andreoli Yes, Mr. President. For the record, Mike Andreoli, 1393 West Oak Street. I represent Shannon and Sarah McCanna. They own the property at 1085 Starkey Road. It's a 1-acre tract. They currently have a house that's been existing there for a number of years. They actually purchased the house from former clients of mine and have lived there now for several years and, and in essence, they're going through a large remodeling project interiorly and exteriorly on the, on the home itself. And we appreciate the efforts in working with Suzanne and working through some of the unusual parts of this particular variance request given the fact that we have a, a zoning classification for this parcel that we generally don't deal with very often in Zionsville. In fact, it's my first opportunity to deal with the, the O-1 open essentially land zoning classification that actually has something on it as this one does.

So, essentially, what, what they're seeking to do is they have in, in the remodeling project they're going to add on slightly to the, to the structure itself. They're going to have a 196-foot addition to the house. In addition, a proposed addition of 515 square feet then they're going to have a, a porch of 235 square feet off the back. Interestingly enough, none of the, none of the additions to the house are any closer to the lot line than the, the current house is itself. So, we're not seeking to expand outside the boundary of the house and make these additions or the remodeling any closer to the actual lot lines than the existing house that pre, predates this, this particular project which, I think, is, is significant. They understood, and just to give you a little history, they understood in talking with the prior owners, that a variance had been granted for the, for the actual garage in terms of its relationship with the lot line but I don't think we could really find any, any past variances that were granted. It may be that they were confused or the prior owner was confused that he had a different zoning classification back when it was done which, in essence, was the case. And so in order for them to move forward with this particular project, they have to get a number of variances as if they were starting over regardless of what the, the project is because they're a legal nonconforming use and if they're going to be making any changes to the, to the structural footprint of the house at all, it requires to go back and get the, the approved variances.

In essence, I think staff report does an excellent job of covering the details and the specifics of this. There are five specific variances. We have Findings of Fact for each one of those and we would encourage your adoption and be happy to answer any, any questions about it. I know that, I think the McCannas have already moved out in anticipation of they had to get a, find another place in

anticipation of getting this approved so they can get started out there. But, of course, it's subject to your approval, it's subject to your good graces in terms of moving forward but that's where we are in the process. Be happy to answer any questions. As I said, I think staff did a really good job working with us and working through the issues with regard to this to make sure that, that every variance that was needed is, is picked up in our request so we're not going to need anymore.

The other thing I toyed with was since this is such an unusual zoning classification, maybe going in and rezoning it to a, a more traditional residential classification that doesn't have some of these unusual provisions. When I talked to my clients about that, they indicated that they were not going to have any plans for any, any future expansion or structures on the property other than what's there now. It's a 1-acre parcel. Whatever they're going to do now is, is they're gonna, they're gonna to keep and not going to have anything else. So we, we decided perhaps a variance, the variance route was, was a better route to go than try to do a, a rezoning of that property and have to talk to people why we're rezoning it and this, that and the other, so not, not the most favored way generally to approach it. So that's at least a little of our reasoning as to why we took the variance route as opposed to try to just rezone it into a classification of all the properties that are generally around it which are much more dense classifications, by the way. Some R-SF-3 classifications and those types of things. You have Sugar, Sugarbush right, right next to it and some other classifications along there so, be happy to answer any questions. I know it's been a long evening. This is not, this is not in a subdivision and we do not have an HOA.

Mundy Thank you. Any questions for the petitioner's representative? I think there are only three other lots perhaps that are in that same zoning class which would have the same issue with a rezone.

Andreoli Well she does own, she does own the lot immediately to the, to the northeast of this particular parcel so it's, this is not the only tract that the McCannas own but there's, there's an older house on, on that property and I think, I think her mom lives on that and there's no plans to do anything with that or remodel that or anything like that so we just really want to just to stick with the, the approvals for the, the remodel that they're doing on this and, and not, and not try to morph this into something bigger than really what, what it is at the time. So, that's our thought process.

Mundy Hearing no indication of a question, are there any, is there anyone here who wishes to speak for or against this petition? Anyone online?

IT No.

Mundy No. Could we have the staff report, please?

Baker Yes. I think Mr. Andreoli wholly did a good job summarizing the request. There's quite a few memorializations here. In, I think, early 2000 this property was previously zoned R-V. Through an ordinance amendment the new zoning classification made it Urban Open Land which created a lot of legal nonconformities and noncompliant issues such as the acreage. It was, it's 1 acre

and the minimum size is 5 acres. The lot frontage is in width is 250 feet and this existing lot is 135 feet. The side setbacks are 50 feet and the additions aren't encroaching any additional that, what's already on the property with the residence. Really, the only thing that's changing is the lot coverage which is going to 19% when the maximum is 10%. So with all of that, those five requests, staff is in favor of all the requests and I'm happy to answer any questions.

Mundy Any questions for staff? Hearing none, is there a motion? A number of motions?

Jones Sure. You want me to go? Variance number one: I move that Docket 2022-59-DSV, Development Standard Variance to provide for an increase in lot coverage up to 19% for the construction of a residential addition for the property located at 1085 Starkey Road in the Urban Open Land Zoning District (O-1) be approved as presented and described based on the findings in the staff report and staff recommendations, submitted Finding of Fact, substantial compliance with the submitted site plans.

Mundy Thank you Mr. Jones. Is there a second?

Pickell Second.

Mundy Thank you Mr. Pickell. All in favor please say aye.

All Aye.

Mundy Opposed same sign.
[No response]

Jones Okay. I move that Docket 2022-59-DSV, Development Standard Variance to provide for the deviation of the side yard setbacks of less than 50 feet for the construction of residential additions for the property located at 1085 Starkey Road in the Urban Open Land Zoning District (O-1) be approved as presented and described based on the findings in the staff report and the staff recommendations, submitted Finding of Fact, substantial compliance with the submitted site plans.

Mundy Thank you Mr. Jones. Is there a second?

Postlethwait/
Pickell Second.

Mundy Thank you Mrs. Postlethwait. All in favor please say aye.

All Aye.

Mundy Opposed same sign.
[No response]

Motion passes.

Jones Okay. I move that Docket 2022-59-DSV, Development Standard Variance to provide for the establishment to memorialize a 1-acre lot which results in a deviation from the required minimum 5-acre lot size for the property located at 1085 Starkey Road in the Urban Open Land Zoning District (O-1) be approved as presented and described based on the findings in the staff report and the staff recommendations, submitted Finding of Fact, substantial compliance with the submitted site plan.

Mundy Thank you Mr. Jones. Is there a second?

Postlethwait/
Lake Second.

Mundy Thank you Mrs. Postlethwait. All those in favor please say aye.

All Aye.

Mundy Opposed same sign.
[No response]

Motion passes.

Jones I move that Docket 2022-59-DSV, Development Standard Variance to provide for the establishment to memorialize the existing lot width which results in a deviation from the required minimum 250 feet lot width for the property located at 1085 Starkey Road in the Urban Open Land Zoning District (O-1) be approved as presented and described based on the submitted findings of fact, the findings in the staff report and staff recommendations, submitted Finding of Fact, substantial compliance with the submitted site plans.

Mundy Thank you Mr. Jones. Is there a second?

Lake Second.

Mundy Thank you Mr. Lake. All in favor please say aye.

All Aye.

Mundy Opposed same sign.
[No response]

The motion is approved.

Jones I move that Docket 2022-59-DSV, Development Standard Variance to provide for the establishment to memorialize the existing lot frontage which results in a deviation from the required minimum 250 feet of lot frontage for the property located at 1085 Starkey Road in the Urban Open Land Zoning District (O-1) be approved as presented and described based on the findings in the staff report, staff recommendations, submitted Finding of Fact, substantial compliance with the submitted site plans.

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Mundy Thank you Mr. Jones. Is there a second?

Pickell Second.

Mundy Thank you Mr. Pickell. All in favor please say aye.

All Aye.

Mundy Opposed same sign.
[No response]

That motion is approved.

Andreoli Thank you for your time.

Mundy Thank you Mr. Andreoli.

That wraps up the agenda. Mr. Jones, you had mentioned you had a –

Jones Yeah, maybe there's actually two. One is, do we want to maybe have a special session or discuss the concept of having Architectural Review Board or HOA signed approval as being part of obtaining a permit? I know the Village has talked about historic covenant district blah, blah, blah – I'm used to working in downtown Indianapolis in historic districts where you have to get a CO, COA to do it and those are required to go get your building permit. The COA is a certificate of appropriateness can be sometimes handled at a staff level or sometimes after they go in front of the Historic Preservation Commission but it's a document that needs to be approved blah, blah blah. Anyways, what I'm saying is maybe we need to change the way we do this because that would've killed a lot of tonight's discussion.

The second issue is –

Mundy Larry, before you go further. I know, Mike –

Dale Uh huh –

Mundy I guess maybe having staff voice any suggestions to alter what you've said or question further for the sake of presenting, this is something that goes back to your group –

Dale Uh huh, uh huh.

Mundy And, we would need to formulate something –

Dale Uh huh –

Mundy To put this in motion but I think we've seen the value of doing something different than we, the way we do it now.

- Dale Okay. The town can establish its submittal requirements for a variance. But I would like to consult with our legal counsel and make sure there's no, there's no obstacle to, to adding that as a submittal requirement.
- Postlethwait Well and I think the goal would be to, I mean, to, to see this family that is literally caught in the middle of this really unpleasant situation –
- Dale Uh huh –
- Postlethwait And if anything, it would ameliorate the possibility of that happening again would be, would be important I think.
- Jones Okay. The second thing is maybe have some sort of discussion with is in relation to just PUDs, planned urban developments. With, specifically with this pool issue, it was kind of interesting to me to go through and find out there were 10 subsections to their residential lots and then it's, and once again, I'm a, a person used to looking at this stuff and then I'm, I'm having to think what this is and I don't know if it's that kind of thing in the process of developing a PUD actually gets this, does it get in front of the staff to a level that they, they know it and see it and know it's coming, know it's out there. Does that make any sense?
- The second part of that is, is and what I'm, what I'm grinding away at is trying to set up a, a scenario where as we get more and more of the PUD requests, we do kind of a separate from these, you know, Plan Commission, where the group can kind of talk about it with staff. I understand there's certain regulations regarding the number of people we can have get together because on the other side of that, I'm hearing feedback that there's existing PUDs that we've approved years ago that are now via the, the town or some other source, having additional requirements made of them and these are things, this is a planned urban development that was, was done and signed off and people have been working and trying to bring it to fruition and now they're back and they're getting asked for changes and in my book, no. The town granted the PUD and the ordinance and everything in it and if they're working to comply with that, we don't have any right to ask for any changes of it but I hear it's going out there and so, that's why I'm trying to make sure to get Commission/BZA staff, somehow people and, and then as things come ahead of it, I, I don't know – I just, hence, that's what I'm saying. It, it's, I, personally, as we looked at this issue was caught off guard that there was 10 subsections to the residential lots and then the way that information is conveyed – and it wasn't until I'm sitting up here actually studying the damn plot plan to figure out it says at the bottom what the setbacks are –
- Dale Uh huh, right.
- Jones So clearly they were kind of in the wrong.
- Dale Uh huh –
- Jones But clearly our staff was kind of in the wrong because it's kind of right there.
- Dale We missed it.

Jones Yeah. We missed it. They missed it.

Dale Yeah.

Jones The pool guy missed it.

Dale Yep.

Jones And they didn't, you know, and that's why it's like, tightening that piece up and then, like I said on the other side, and then, like I said, with, once again, Holliday Farms, I keep beatin' up on them but the, one of the boxes that, that got clicked was the multi-family on the north end of it yet, if you read through all the verbiage, wow, we were supposed to have an amusement park up there. I don't know what it was supposed to be but it wasn't supposed to be apartments but we did approve it. The property is entitled for that use and I don't think anybody on the BZA or the Plan Commission when that was coming through really – that wasn't the vision we were seeing for it. It's entitled to be that but it wasn't – and, and that's what I'm trying to say about getting our path kind of cleaned up a little bit. Does that make any sense, my, my ramblings?

Dale Uh huh.

Postlethwait I would just add and this is probably a perfect world sort of scenario that where, where I'm dwelling at the moment – but in a perfect world, the homeowners would have, would have their covenants given to them at the time they purchase the lot and within a way that it's understandable for the average person who is not a specialist in zoning and ordinances and so on because I think that part in listening to this gentleman who is still with us talking about understanding and having been given a copy of the covenants to understand what the rules and regulations are going to be for going forward would be and I don't know whether the town says that to developers –

Dale Uh huh –

Postlethwait Whether the town encourages developers to make those things available, I don't know.

Lake So, my understanding is that's the responsibility of the title company at, at closing to provide those documents to the homeowner. So, I think that's where the failure occurred. What gets me though is that the homeowner got notice from the Architectural Review Board that the pool wasn't approved but he just continued on with construction. That's what got me.

Mundy Yeah. I, Larry and I live in the same development and I did get a, a book of all the covenants and restrictions. It did come from the title company and I got that once I purchased the lot.

Jones Yeah.

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- Mundy And I didn't know how it happens in every instance, but I know that that's how it happened when I bought a lot there.
- Jones Yeah. Yeah, prior to this meeting I pulled out my old approved site plan for the house and it had a little red checkmark on the setbacks on either side, the playground in the back had been circled to keep it out of the easement, you know, so it got reviewed and there was notes on it and it was pretty clear I had to go through that process but for getting the building permit, no. Nobody needed it. It wasn't, wasn't required.
- Dale When I bought my house, the title company made sure I check, it was check marked where I had read the covenants. No I hadn't, I didn't read the covenants but I had to check that I did.
- Jones But you checked that you did.
- Dale Yeah.
- Jones Yeah.
- Dale And also, there's a difference between having read the covenants which is just knowing that there's an Architectural Review Board.
- Postlethwait Right.
- Dale And most people in their neighborhood know whether there's a, a HOA or an Architectural Review, whether they've read the covenants or not.
- Postlethwait Right. And what the process is if you're –
- Dale Yes.
- Postlethwait Going to do anything –
- Dale Yes.
- Postlethwait To your property that needs to go through this process.
- Dale Yeah.
- Mundy I, I, I'd say when I got that book, first of all, all I had was a piece of ground. I didn't even have a plan for a house –
- Jones Yeah.
- Mundy And I could not have told you that, that there was a, a review board. I would've had no idea.
- Jones Well you got, you got in early, Steve. I think it was still just Brenwick and Brenwick only wasn't it?

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Mundy Yeah, it was Brenwick, yes. Wasn't Brenwick when you –

Jones Yeah, it was Brenwick.

Mundy Okay.

Jones And they had a fairly stiff review –

Mundy Yeah.

Jones Chris, you want to get out of here? Or should we call the meeting?

Lake I do. I, I would move, I'd move to adjourn.

Jones There ya go.

Mundy Chris, you've got some things you'll need to sign when you get back in next time.

Lake That's fine.

Mundy Thanks for joining us.

Lake Yep, no problem.

Jones We're done?

Postlethwait I don't know.

Mundy I hope you're someplace that's nice and warm.

Pickell He made a motion to adjourn.

Jones He made a motion to adjourn.

Postlethwait Second.

Lake Oh, no.

Mundy All right. Your motion was accepted. Thank you for that. It was seconded by Larry Jones and Kathi Postlethwait.

Pickell Who are walking out the door.

Mundy And they're walking out the door. The meeting is adjourned.

Postlethwait Stay well.

Dale Thank you everybody. Thank you Chris.