



MEETING RESULTS ZIONSVILLE BOARD OF ZONING APPEALS

Wednesday, May 3, 2023

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 were scheduled for consideration:

- I. Pledge of Allegiance
- II. Attendance **5 of 5 members attended.** IN-PERSON: C. Lake, L. Jones, S. Mundy, A. Pickell, K. Postlethwait
- III. Approval of the April 11, 2023, Minutes **Approved 5 in Favor, 0 Opposed**
- IV. Continuance or Withdrawal Requests

Docket Number	Name	Address of Project	Item to be considered
2023-05-DSV	D. Fleenor	10663 Barrington Way Zionsville, IN 46077	The Petitioner requested a continuance to the June 7, 2023, BZA Meeting. Previously continued from the April 11, 2023, BZA Meeting. 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.

V. Continued Business

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

VI. New Business

Docket Number	Name	Address of Project	Item to be considered
2023-08-DSV	C. Kantner	11750 E. 200 South Zionsville, IN 46077	<p>Conditionally approved as presented & filed w/ exhibits & per staff report. 5 in Favor, 0 Opposed Petition for Development Standards Variance to provide for an accessory structure which exceeds the permitted accessory square footage in the Rural General Agricultural Zoning District (AG).</p>
2023-09-DSV	B. Slack	1480 N. 1100 East Sheridan, IN 46069	<p>Conditionally approved as presented & filed w/ exhibits & per staff report. 5 in Favor, 0 Opposed Petition for a Development Standards Variance to provide for two primary dwellings on one lot in the Rural General Agricultural Zoning District (AG).</p>
2023-10-SE	B. Slack	1480 N. 1100 East Sheridan, IN 46069	<p>Conditionally approved as presented & filed w/ exhibits & per staff report. 5 in Favor, 0 Opposed Petition for a Special Exception to provide for a new Single-Family Dwelling and related accessories on a parcel in the Rural General Agricultural Zoning District (AG).</p>
2023-11-DSV	M. Hollis	10550 Pete Dye Ridge Zionsville, IN 46077	<p>Continued to the June 7, 2023, BZA Meeting. 3 in Favor, 2 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.</p>
2023-12-DSV	B. Lykens	410 W. Linden Street Zionsville, IN 46077	<p>Approved as presented & filed w/ exhibits & per staff report. 5 in Favor, 0 Opposed Petition for Development Standards Variances to provide for a detached garage which: 1) Deviates from the side yard setback 2) Deviates from the aggregate side setbacks 3) Memorialize the existing driveway which deviates from the side yard setback in the Urban Village Zoning District (R-V).</p>
2023-13-DSV	D. Snyder	4255 Strathmore Lane Zionsville, IN 46077	<p>Denied as presented. Negative Finding of Fact will be executed at the June 7, 2023, BZA Meeting. 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.</p>
2023-14-DSV	M. Breidenstein	445 W. Walnut Street Zionsville, IN 46077	<p>Approved as presented & filed w/ exhibits & per staff report. 5 in Favor, 0 Opposed Petition for a Development Standards Variance to provide for a deck, walkway, and firepit which exceed the allowable lot coverage in the Urban Village Residential Zoning District (R-V).</p>

2023-15-DSV	E. Grasee	3963 Club Ridge Estates Zionsville, IN 46077	Denied as presented. Negative Finding of Fact will be executed at the June 7, 2023, BZA Meeting. 5 in Favor, 0 Opposed Petition for a Development Standards Variance to decrease the rear setback to provide for a swimming pool, spa, and patio in the Holliday Farms Planned Unit Development.
2023-16-DSV	S. Gorgievski	365 W. Cedar Street Zionsville, IN 46077	Continued to the June 7, 2023, BZA Meeting. 5 in Favor, 0 Opposed Petition for Development Standards Variances to provide for a home addition which: 1) Deviates from lot coverage 2) Deviates from the aggregate side setbacks 3) Memorialize an existing side yard setback of the single-family residential home in the Urban Village Zoning District (R-V).

VII. Other Matters to be considered:

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

Please note that a quorum of the Zionsville Town Council may be in attendance at the meeting.

Respectfully Submitted: Mike Dale, AICP
 Director - Community and Economic Development Department
 Town of Zionsville

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

Staff attending: Mike Dale, Janice Stevanovic, Suzanne Baker, Bob Clutter, attorney

A quorum is present.

Mundy Welcome to the May 3, 2023 meeting of the Board of Zoning Appeals. I'll call the meeting to order and the first item on the agenda is the Pledge of Allegiance. We'll ask you to join us.

All Pledge of Allegiance.

Mundy Thank you. The next item is attendance.

Dale Steve Mundy?

Mundy Present.

Dale Chris Lake?

Lake Present.

Dale Andy Pickell?

Pickell Present.

Dale Kathi Postlethwait?

Postlethwait Present.

Dale Larry Jones?

Jones Present.

Mundy Thank you. Next item is approval of the April 11, 2023 minutes. Those were included in the package. Is, are, are there any questions or concerns or corrections? Hearing none, is there a motion to approve?

Lake So moved.

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

Postlethwait Second. Second.

Mundy Thank you Mrs. Postlethwait. All those in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

They are approved.

In Continued Business we have had a request on Docket Number 2023-05-DSV, D. Fleenor, 10663 Barrington Way, Zionsville. The petitioner's representative has requested a continuance. Is, at a, and I believe it was a client that passed away and he was responsible and could not be here tonight so he is requesting to continue this until the June meeting. If there are no objections, could we have a motion please?

Lake So moved.

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

Pickell Second.

Mundy Thank you Mr. Pickell. All those in favor of continuing Docket Number 2023-05-DSV to the June meeting please –

Dale What is, what is the date of, what is the date of the June meeting?

Baker June 7th.

Dale The 7th?

Baker Yes.

Dale Okay.

Mundy June 7th just to get that on the record then. Thank you. All those in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

That is approved to move to the June 7th meeting.

The next item on the agenda is Docket Number – let me first though ask – do we have any virtual attendees?

IT 9:28 inaudible off microphone.

Mundy We have one? Okay. If they wish to enter at any time as a, with comments please let me know. Thank you.

Next item is Docket Number 2023-08-DSV, C. Kantner at 11750 East 200 South in Zionsville. Petition for a Development Standard Variance to provide for an accessory structure which exceeds the permitted accessory square footage in the

Rural General Agricultural Zoning District. Staff, could we have the staff report, please?

Baker Yes, thank you. The petitioner is proposing to construct a 3,360 square foot barn. The added square footage will be over the permitted primary square footage thus not being subordinate in area. The size of the residence is 3,382 square feet and with the proposed accessory square footage, it'll bring the total to 4,064 square feet. It should also be noted that the petitioner has an existing barn that he plans to demolish once the new barn is constructed and has committed to do so as part of the BZA approval. Due to the residential history of the property and deviations from this requirement and surrounding properties, staff is favorable of the request and I'm happy to answer any questions.

Mundy Thank you. Are there any questions for staff? Hearing none, is the petitioner here?

Kantner Yes.

Mundy Mr. Kantner?

Kantner Yes.

Mundy If you would come to the podium and state your name and address please –

Kantner Okay.

Mundy And then you can fill us in on anything else that the staff did not cover or anything that you think they did not cover adequately.

Kantner Fair enough.

Mundy Anything else that you think would be helpful for us to know.

Kantner Yeah, fair enough. My name is Craig Kantner. I live at 11750 East 200 South in Zionsville. Our purpose in doing this, my wife and I bought our fixer upper about 16 years ago and have been working diligently doing that and part of what we discovered is a lot of things that were built at our home were home built. One of them is the horse barn that we currently have that has simply outlived its life and it needs replaced. We've done everything we could, we've re-roofed it, we've re-sided it, we've put concrete in there. It is done. We need to replace it. Part of what also does not function well at our home is our attached garage. It is a 3-car garage but one of the bays is full of mechanical devices – it's the furnace, it's the, the heat pump, it's the water heater and so it's basically a 2-car garage that I can't fit my truck in so it's kind of a, a 3 single-bay garage we can fit a Jeep Wrangler in so it's kind of a, a space that's, that's not very feasible as a garage.

So what we want to do is build a bigger barn and so when we proposed the size of the barn it, it fit. It, it's 20 square feet less than our living space, however, I soon learned after that proposal was sent in and rejected that we had to include our attached garage as accessory space which doesn't make sense to me but it is what it is. So I could see an attach, a detached garage being counted as that. So

the thing we are trying to overcome that serves no function is now hindering us from moving forward with the barn that we proposed. The other part about it is, is as we've been fixing up our home, we're not going to build this ourselves. We're going to employ FBI Builders which is a professional pole barn builder to make sure that it fits the surrounding community as well. Our neighbors each have professionally built barns that are, that fit well with it and so we were certainly not going down the path of a home builder type of barn. We're going to make sure it's done professionally and so it fits in well with the, with the surrounding community that we live in. So, technically, we're less than our living space. Technically, we're also over because we have to add our attached garage space to it so that's all I'm asking is if we could just pursue the construction of the new facility that it would be, I guess, a, a little bit over the square footage that's allowed because of our garage.

Mundy Okay, thank you. Any questions for the petitioner?

Postlethwait I don't, what I have is really not a question it's just a, a compliment. I want to congratulate you on Schedule A that you had submitted along with this petition because it is as clear and concise a statement of not only your current situation but what your goals are as I think I've seen here and I'm, I, for one, am very appreciative. It would make our job simpler if everyone were, were able to do that for us. So thank you.

Kantner Not bad for a public education, huh?

Postlethwait Darn good I would say.

Mundy And you, you've seen the staff report so you are amenable to having the old barn demolished –

Kantner Oh 100%, yeah.

Mundy Within 30 days after completion of the new?

Kantner I'd be happy to, to, yeah, to raze it for sure.

Mundy Okay. The Fire Department does not like for you to burn those things, by the way, so –

Kantner Yep.

Mundy If you had thought of demolishing it in that way, please don't.

Kantner No, no, no, yeah, we'll take care of it.

Mundy Any other questions for the petitioner? Are there any remonstrators who would like to speak for or against this project? Any online? No? Hearing none, is there any further discussion among the Board? No further discussion. Is there a motion put forward?

Lake I move that Docket Number 2023-08-DSV, Development Standards Variance to provide for an accessory structure which exceeds the permitted accessory square footage at the property located at 11750 East 200 South, Zionsville in the Rural General Agricultural District (AG) be conditionally approved as presented and described based on the Findings in the staff report and staff recommendations, submitted Findings of Fact, substantial compliance with the submitted site plan and the condition that the existing barn 30 foot x 40 foot must be demolished within 30 days of the proposed barn being issued a temporary Certificate of Occupancy. Once the existing barn is demolished, the proposed barn will be able to obtain the Final Use and Occupancy permit.

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

Postlethwait Second.

Mundy Thank you Mrs. Postlethwait. All those in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

Motion passes.

Kantner Thank you very much.

Mundy Good luck with your project.

Kantner Thank you.

Mundy The next item is – and I’m going to call this out as two items. There, there are two separate docket numbers – 2023-09-DSV, B. Slack at 1480 North 1100 East in Sheridan, Indiana. Petition for a Development Standard Variance to provide for two primary dwellings on one lot in the Rural General Agricultural Zoning District. The second petition item is 2023-10-SE, again, B. Slack, 1480 North 1100 East in Sheridan. Petition for a Special Exception to provide for a new Single-Family Dwelling and related accessory on a parcel in the Rural General Agricultural Zoning District. Staff, could we have the report on those please?

Baker Yes. The petitioner is proposing to construct a second primary dwelling which includes a one-car garage, one bedroom, one bath, kitchen, living space and a small office which will be at least 1,200 square feet. While this constitutes a secondary primary dwelling, it’s more so a detached accessory apartment for a family member to utilize. Further, since this is in the Agricultural Zoning District, it requires a special exception for a single-family residence/primary dwelling. The proposed secondary dwelling does not significantly change the use of the property and does not exceed the overall density of the surrounding properties. Therefore, staff is favorable of this request given that they record a Right to Farm commitment and a commitment which restricts utilization of the approved dwelling to be used for non-income generating use only. Happy to answer any questions.

- Mundy Thank you. Any questions for staff?
- Lake Yeah, can I get clarification on Drawing 1.01? There's a 2-car garage yet your description said 1-car garage. Can you clarify which is correct?
- Baker I think I will ask the petitioner to speak to that because I'm not sure.
- Lake I can ask when they come up.
- Baker Okay.
- Mundy Yeah, I don't know what this looked like digitally, but on paper I could not read anything on the drawing. It was so fine print, it was hard for me to make out exactly what was being indicated on the drawings.
- Lake Yeah, I mean, the, the label calls it out as a 2, 2-door garage is what it calls it out as and there's 2 cars on there so I just, I'm assuming it's a 2-car garage and I don't care one way or the other, I just want our petition to be accurate and if we're calling it a 1-car garage we should probably make sure we change that.
- Mundy Any other questions for staff? Hearing none, is the representative of the Slacks here? Mr. Slack?
- Slack Yes sir.
- Mundy If you would give us your name and address and then tell us as well anything that we don't know about this petition that you think would be important for us to know.
- Slack My name is Brad Slack. I live at 1480 North 1100 East in Sheridan 46069. So we were gonna, we, we spent like 10 years developing our house from raw ground and now that project is completely finished so now we're working on the outside and part of that was to put a pool in and then a pool house. We didn't over build our main house just because we don't like huge houses but my wife's from Europe so she has family that travels over and does extended stays. I've got a son with a slight disability that might need a place so that he can progress out into life and my parents are aging so we decided to see if we could build a like 1-bedroom, 2-car garage apartment for those uses on our property. It would be set back from the main structure. It would be lower than the overall height of the main structure but the, the development, the architectural costs are about \$40,000 so we're still kind of playing around with that. Because it has to have, because we want it to have a full kitchen it would be considered a secondary primary and then the minimum square footage is 1,200 feet, square feet so. That's basically what we're looking at.
- Mundy Thank you.
- Slack Yep.

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Mundy Any questions for the petitioner? You do understand that as was indicated by staff, there will be, you will need to give an acknowledgement to the Right to Farm and that the apartment is not being used as an income-generating unit, that it would be used for family or guests?

Slack Yeah and –

Mundy Thank you.

Slack We've already signed the, the Right to Farm once on –

Mundy If you –

Slack Sorry. We, we already signed the Right to Farm once on our main structure but I'm happy to sign it again.

Mundy Right. Okay. Thank you. Any other questions? Are there any remonstrators that are here to speak for or against this project? None online? Thank you. Any further discussion among the Board? Is there a motion? And it will be two separate petition items so there's a motion on the DSV first.

Lake Sure. I move that Docket Number 2023-09-DSV, Development Standards Variance to provide for two primary dwellings on one lot in the Rural General Agricultural Zoning District (AG) 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 and a commitment recorded to the execution of a zoning commitment restricting the utilization of dwelling units on the property to non-income generating occupancy only.

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

Postlethwait Second.

Mundy Thank you Mrs. Postlethwait. All in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

That motion is passed.

On the special exception –

Lake Yeah, I move that Docket Number 2023-10-SE, a Special Exception Petition for the property located at 1480 North 1100 East, Sheridan in the Rural Agricultural Zoning District (AG) be conditionally approved as presented and described based on the Findings in the staff report and staff recommendations, submitted Findings of Fact, substantial compliance with the submitted site plans, it shall be required that the petitioner execute the Right to Farm Acknowledgment document and a commitment recorded to the execution of a zoning commitment restricting the

utilization of the dwelling units on the property to non, non-income generating occupancy only.

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

Pickell Second.

Mundy Thank you Mr. Pickell. All in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

Motion passes. Best of luck.

Jones Quick note – did we confirm it's a 2-car garage?

Lake He did state yes it was a 2-car garage.

Jones All right.

Mundy The next item on the agenda is Docket Number 2023-11-DSV, M. Hollis at 10550 Pete Dye Ridge, Zionsville. Petition for a Development Standard Variance to decrease the rear setback to provide for a swimming pool in the Holliday Farms Planned Unit Development. Can we have the staff report please?

Baker Yes. The property is currently under construction for a single-family residence which has been permitted. The petitioner is proposing, which has not yet been permitted, for an inground swimming pool which encroaches into the 30-foot setback. Per the petitioner and the site plan, the request for a 23-1/2-foot rear yard setback would encroach 6-1/2 feet into the required rear setback. The pool, the proposed pool would be 25-1/2 feet from the rear property line but the concrete pool deck would be 23-1/2 feet at the closest from the rear property line. Within the Town Zoning Ordinances, pools are considered accessory structures to residential uses. Many residential zoning districts have a decreased rear setback for accessory structures which is less restrictive than primary structure setbacks. However, in the Holliday Farms PUD Ordinance there's no accommodations to allow for a decreased setback for accessory structures. This would include, so essentially, all the setbacks are the same for the residence, pool, detached accessory structures, patio, deck, etc. It's staff's opinion that strict application of the PUD does not result in unnecessary hardship and use of the property. The site is not unique or provide unusual circumstances of the condition of the site. The building permit for the residence was issued in December 2021 and the location of the swimming pool and the attached pool deck were not identified on the plot plan at that time. Options remain open to the petitioner to move the pool or reduce the size and/or reduce the size of the concrete pool deck. Based on how the current PUD Ordinance is written today, staff is unfavorable of the request and I'm happy to answer any questions.

Mundy Thank you. Any questions for staff?

- Postlethwait I do have one question. There's nothing about this lot that precludes the, the setback as it is. The pool is not necessarily forced to be positioned in a way that it encroaches on the setback based on the lot itself.
- Baker Not in staff's opinion, no.
- Jones Something else I just want to confirm because I was kind of went back and read through the PUD. Holliday Farms in the PUD there's no lot coverage ratios they need to meet?
- Baker Correct.
- Jones So they can build from setback line to setback line?
- Baker Correct.
- Jones So basically any kind of expansion over the setback lines is basically increasing the buildable area. Okay, that answers my question.
- Mundy Are you still working on a question, Larry or?
- Jones That was the question.
- Mundy Okay, all right.
- Jones Sorry.
- Mundy I wasn't certain if you were through.
- Jones There is no lot coverage ratios –
- Mundy Correct. Okay.
- Jones Associated with the PUD in Holliday Farms.
- Mundy Any other questions for staff? Hearing none, are, is the petitioner here?
- Mears Yes.
- Mundy Mr. Hollis?
- Mears No, I'm Adam Mears.
- Mundy If you give your name –
- Mears Yep.
- Mundy And address please.

Mears Sure. Thank you members of the Board. My name is Adam Mears. I'm an attorney with Gradison Design Build, also Gradison Building Corp. Our office is 6330 East 75th Street, Indianapolis 46250. I'm here on behalf of Mark and Kim Hollis, our client. I think there is some uniqueness to this petition. I know this clearly. I saw on the agenda there's three of these that were going to be considered today. I know in January there was one that was approved in, into this setback so this is not a unique request that we're asking but in this case based upon staff's report, which I know mentions the original ILP where this wasn't considered and, and I, I do want to talk to that. We started this home with a client that is not Mark and Kim Hollis, a completely separate individual started the home, were, however far we were through the house when that individual, for whatever reason, decided he didn't want to proceed any further. Thankfully, he was able to find Mark and Kim Hollis that were interested in kind of coming into a plan that had already been designed for somebody else and they kind of assumed the project from there, became the new owners and that's when they decided they wanted to put the pool in. Clearly if, if we had done this with them from the beginning, we would've had that on the original ILP and gone through it at that time but they came in, made some modifications to the plan that they were able to, considering we were already moving forward with building, it was already under construction, and then they had chosen to, to add the pool at that time so there wasn't, there wasn't a pool planned when we originally filed the original ILP because it was a different buyer who didn't want a pool.

We do have HOA approval. The HOA we met with several times. They've seen these plans, they've approved these plans. This is not a home that backs up to another home. It backs up to a pond. I think most homes in Holliday Farms don't necessarily back up to another home. They're either backing up to the pond or the golf course. However, this home essentially, all it has behind it is a pond so it's not as if this 5 or 6-foot encroachment is going to disturb somebody behind the house. It's simply just going to be slightly farther towards the pond. I think it's also important to note, as staff said, normally accessory structures aren't held to the same standard so when a lot, I think that's why you're seeing a lot of these types of variances because it's not, it's not as if we're asking for a large structure to go beyond, it's simply a, a small portion of the patio and a, a small portion of the pool. To reduce it would essentially make, make it to where there's not hardly any patio and, again, I think for the value of the lot, for the value of the neighborhood, the fact that the HOA who's clearly the largest stakeholder when it comes to the neighborhood and the sellability and the look of the neighborhood, they don't have a problem with it. We've heard nothing from any surrounding neighbors that have had a problem with it. So we believe, we believe it's a great plan. It's going to look great. It's, it's gonna, I think, increase the value of, of not only that lot but the neighborhood as a whole and would ask for your approval. I'd be happy to answer any questions you may have.

Mundy Thank you Mr. Mears. Questions for the petitioner's representative.

Lake Was the plot plan ever amended for this property?

Mears Uh, no –

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- Lake So is the plot plan correct or is your plan for the residence with the pool correct because both are aligned differently on the site?
- Mears So the, the house is where it is. It starts up at –
- Lake Per the plot plan or per the drawing with the pool on it because they're not oriented the same? The draw, the plot plan has the one side of the house on the right side parallel to the property line. The pool drawing has the building canted probably 10 degrees in opposition to what is shown on the plot plan.
- Mears Well from, at least from, from the way I'm looking at it, it appears as if the, the, the house should match the plot plan. I don't know what, where Oasis, who did this drawing, maybe they just mislaid it out but yeah, I mean, we, we started the house with the plot plan, it's been inspected –
- Lake It just affects how much of the pool sticks over –
- Mears Right.
- Lake The setback line.
- Mears Yeah and I think Oasis did their, did their, they're the ones who did the calculation showing the two 5-feet that we provided the staff and I know that, that clearly there'll be, there'll be a new ILP for the pool that'll come in and show that layout but, but I'm under the impression that clearly the, the original plot plan that was approved is what was used when we started the home so –
- Lake Okay.
- Mears The footprint of the home should be what was approved by the plot plan.
- Lake If that's the case, then their drawing is incorrect and the dimensions they have on the plan are incorrect and so I don't know how keen I am on deciding on a petition that's not accurate. That's my personal opinion. I don't want to speak for anybody else.
- Postlethwait I would agree with you.
- Mears Well I'm happy to, I'm happy to, if continuing this until next month to allow me to go back and confirm those things, I'm happy to do that.
- Postlethwait I have another question for you –
- Mears Uh huh –
- Postlethwait At the time that the new owner took over the house and determined that they did want to have a pool, did they come into the Planning office and discuss how that might be sited so that they could respect the setback that exists on that property?

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- Mears No, I think the original step was we spent a lot of time with the HOA going through it with them and, and did not, I don't believe that anybody came in and talked with Planning about –
- Postlethwait So they were –
- Mears That at the time of the layout.
- Postlethwait So they were unaware of the setback line? Or they were aware of the setback line?
- Mears That, I don't, I don't know. My guess is clearly it, it's easy to see when you see it on paper that there is a setback line there. I'm sure anybody who looked at it would see that but, but I, I don't, I can't speak to, to what they actually saw. I mean I, I know that they knew, they knew of one neighbor that had come in and gotten a variance for the pool for a similar, that was approved and I think for whatever reason they, they, they had some belief that that was allowable since it's been allowed already.
- Postlethwait But you would understand that each case is taken individually –
- Mears Sure, of course.
- Postlethwait There's not a precedent.
- Mears Of course.
- Postlethwait So my other question would be did the pool contractor understand – I mean typically pool contractors will know what the setbacks and the, for each lot –
- Mears They did.
- Postlethwait And did they understand that this was going to be encroaching on, on the setback?
- Mears Yeah, I mean, they did the drawing that shows it encroaching so –
- Postlethwait Right.
- Mears Yeah they, they would've known that.
- Postlethwait And, but they didn't deal with the people in the Planning office about this I take it? There were no discussions with the Planning office about the setback?
- Mears Not, not, not that I'm aware of, no.
- Lake I think where you're going is my frustration of draw it the way we want it –
- Postlethwait Yeah.
- Lake Not the way it's required to be and we'll go get it approved later.

Postlethwait So and the idea is that it, that the imposition of this setback should be a hardship. It, it's not that it should be an inconvenience, which is what I'm interpreting that this is an inconvenience for many of these. People would like to have a pool and they can't, they can't justify or they can't figure out how it should go on the lot –

Lake Or they don't get quite as much patio space.

Postlethwait They don't get quite as much patio space. So it's not really that it's a hardship, it's just inconvenient that it's not going to allow them to do what they would like to do on that piece of property.

Mears I, I –

Postlethwait Is that –

Mears I hear what you're saying, I don't, I don't, respectfully, I don't, I don't know that I agree one way or the other –

Postlethwait You don't have to. It's fine.

Mears Yeah. No, I understand what you're saying though, sure.

Postlethwait Okay.

Jones And I guess what I want to clarify is that with the previous situation where we granted a variance for a pool, the representative from the Homeowners Association from Holliday Farms was against us granting that variance. Is that correct?

Lake Yes.

Jones Now –

Mundy I don't know that we know that. What we do know is that they emphatically told us they hadn't approved it.

Postlethwait Right.

Lake At the time, yeah.

Postlethwait The Architectural –

Mundy At the time.

Lake Yeah.

Jones Yeah.

Postlethwait The Architectural Review Board.

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- Mundy Yeah, I, I don't think the –
- Lake The time they denied.
- Mundy Yeah, I don't think we know what their position was other than they had not approved it.
- Jones I would concur with that statement.
- Lake I mean they, they presented that they were told they can't build it.
- Jones Okay.
- Lake And that was in –
- Postlethwait If my memory serves me, they had come into the Planning office and had been made to understand that they could do it and had started, consequently had started on the construction.
- Lake Yeah, so that was different.
- Postlethwait That was the difference, I think.
- Jones Now we're being told that the Homeowners Association is approving this? Is this correct?
- Mears That is correct.
- Jones Okay.
- Lake Yeah.
- Jones So my earlier comment regarding setbacks and a lack of any kind of lot coverage ratio kind of ties into my second statement is that if Holliday Farms wants to change their setback lines they can petition the Plan Commission to do that. If it does show up in front of the Plan Commission, I'm going to request a revised drainage study for the entire Holliday Farms subdivision because we have no control over the amount of buildable area on any of these lots and if the developer is going to start changing the buildable area, that affects stormwater runoff, it affects the retention ponds. So if the Holliday Farms group wants to approve these variances, I think we should be able to request that they then revise the drainage plan for the entire Holliday Farms subdivision and show to us that there is the water retention and management for this additional areas that they are now developing. Until then, I, I see no hardships, I see no issues, I see no –
- Lake Well I think my comment was if the house is oriented the way that it is on the plot plan –
- Jones Well and we don't even have a –

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- Lake I don't know that the pool A, A it does, it won't stick into the setback as far as it does and they may find that making a 2-foot adjustment puts them in compliance and solves any type of problem.
- Jones I, I have no interest in actually participating in anything where we're waiting, we're granting approvals and then waiting on –
- Lake No, no, no –
- Jones Drawings to match whatever the hell we approve.
- Lake I'm, I'm absolutely suggesting that that be figured out prior to not after our approval.
- Postlethwait I would also just submit that the HOA, as much as they may be in agreement with this, they are really not in a position to make the decision about whether it's allowed or not. I mean--
- Mears Clearly we have to come here so yeah, I, I, I agree with that. I think we couldn't do it without their approval –
- Postlethwait Right.
- Mears So it's just one of, one of the steps to make. I guess respectfully I would ask if, if we could table this for a month, allow us to go back to Oasis and make sure that, that the layout is, is accurate and see if that, how that modifies things and, and come back next month with that updated, updated information if that would be acceptable.
- Mundy Well let's see where we get on this. That's very likely where it looks like –
- Mears Sure.
- Mundy It's going. I think it might be beneficial to go ahead and let's see if there are any remonstrators who have other things which you may need to look at –
- Mears Sure.
- Mundy As well and Mr. Lake's point clearly when you look at the aerial photograph, the house is positioned differently than it is on the drawing. So enough different that I'm not even sure the drawing could possibly be right but we need to know that. Any other questions for the petitioner's representative? Are there any remonstrators here to speak for or against this project? Any online? Seeing none, is, is there any further discussion? No further discussion among the Board. Is there a motion? The petitioner has indicated they were perfectly fine with requesting a continuance until the June 7th meeting so that they can get the plot plan and the actual position of the house on the lot squared away for us and then return.
- Lake I move that Docket Number 2023-11-DSV, Development Standards Variance to provide for a deviation of the rear yard setback to 23.5 feet for the construction of

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a swimming pool and concrete deck for the property located at 10550 Pete Dye Ridge in the Holliday Farms Planned Unit Development be continued to the June 7, 2023 BZA meeting.

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

Pickell Second.

Mundy Thank you Mr. Pickell. All those in favor please indicate by saying aye.

Mundy, Lake, Aye.
Pickell,
Postlethwait

Mundy Opposed same sign.

Jones Nay.

Mundy We have 4 ayes, one nay.

Dale There should be a roll, roll vote, call on that for the record.

Mundy All right, if you'd do the roll call vote please.

Dale Mr. Mundy?

Mundy Aye.

Dale Mr. Lake?

Lake Aye.

Dale Mr. Pickell?

Pickell Aye.

Dale Ms. Postlethwait?

Postlethwait Nay. Changed my vote.

Dale Mr. Jones?

Jones Nay.

Mundy The vote is 3, 2 – 3 in favor, 2 opposed. And I would ask if there's any further comments from the two nays that would be helpful before we conclude this –

Jones I think at the core is –

Mundy Your, is the drainage –

- Jones I have no interest in granting variances that go across setback lines. There's no reason for it and if within the scope and scale of the development and the builders and everybody else working in there, if they can't work within those, those lines, it's, it's not a, it's not an issue that really generates any kind of variance. The lots should be designed to accommodate the homes being built on them. The homes then should be sized appropriately, placed appropriately on the lot and if things like pools and other accessory structure is wanted, it is everyone else's responsibility to see that they make the appropriate choices and decisions and then to come in later and ask for variances on things like this, there's no hardship, it's just lack of planning. That is not a hardship.
- Mundy All right. Thank you.
- Postlethwait I would, I would agree.
- Mundy Okay.
- Postlethwait Yeah.
- Mundy All right. I think the other which you may have heard is demonstrating a hardship and we always have, there's always some difficulty. A hardship for one person is not a hardship for the next.
- Mears Sure.
- Mundy And that's always a matter of some subjectivity but that, too, is questioned. So –
- Mears Understood.
- Mundy We will plan to see you back –
- Mears Very good.
- Mundy On June the 7th then.
- Mears I'll be here.
- Mundy All right.
- Mears Thank you very much.
- Mundy Thank you.

Next item on the agenda is Docket Number 2023-12-DSV, B. Lykens at 410 West Linden Street. Petition for Development Standard Variance to provide for a detached garage which 1) Deviates from the side yard setback; 2) Deviates from the aggregate side setbacks; 3) Memorializes the existing driveway which deviates from the side yard setback in the Urban Village Zoning District (R-V). Are the Lykens here? Okay, thank you. Could we have the staff report please?

- Baker Yes, thank you. The petitioner is requesting to demolish an existing detached garage and construct a new garage roughly in the same location; however, it'll be slightly larger in size. With the parcel being a corner lot on frontage both on Linden and 4th Street, it thus has two front yards and two side yards. The side yard being on the west and the north side which is against the alley. The proposed garage is requesting to be 3 feet from the side yard and 0 foot from the north alley property line. The request is not encroaching any further than the setbacks existing today with the current garage. Along with the side yard request, the aggregate would then be also 3 feet and not meeting the 15-foot aggregate. Lastly, there is a request to memorialize the existing driveway location which runs parallel to the side property line and does not meet the 5-foot setback. With the proposed garage not encroaching any further to the existing setbacks today and other properties in the area also enjoying deviations from setbacks, further by meeting the aggregate would move the garage more interior to the property thus decreasing the usable open space as well as possibly the size of the driveway. With that said, staff is favorable of the request and I'm happy to answer any questions.
- Mundy Thank you. Any questions for staff? Seeing none, would the Lykens please like to come to the podium. If you'd give us your name and address please and then provide us with any information that you think we should have to consider this petition.
- Lykens Hello. My name Brent Lykens and I live at 410 Linden Street in Zionsville. And I think the staff has pretty much summarized it. Our, our goal is to maintain the, the charm in the neighborhood but the current structure, although it looks nice, is unsafe and unusable as a garage so our request is the ability to rebuild the garage in the current footprint, maintaining the look and the style as it is now but moving, like she said, moving the new garage to meet the aggregate setbacks on this lot and place it really in the middle of our backyard so this would kind of reduce the available greenspace on a corner lot with a lot of visibility as it is.
- Mundy Okay, thank you. Any questions for the petitioner? No? Seeing none, do we have anyone here who wishes to speak for or against this proposal? Any online? No? Hearing none, any discussion among the Board? Hearing none, is –
- Jones Yeah, I just want to check something – is this, which petition had the comment about the difference in lot lines?
- Lake Not this one.
- Postlethwait Not this one.
- Jones Got it, okay. I was –
- Lake I was thinking the same thing.
- Jones All right, I was just –
- Lake Trying to separate my two garage projects.

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Jones Okay, never mind. Sorry.

Mundy Well if there, if there are no questions, is there a motion on this petition? And I will point out just a procedural note – you may have seen this Mr. Lykens, but the, it's noted that should this be approved there are overhead lines in the general vicinity of the proposed garage and if approved, the petitioner is encouraged to coordinate with the area utility before striking out. So, is there a motion for this petition?

Postlethwait I move that Docket Number 2023-12-DSV, Development Standards Variance to provide for deviations from the side yard setbacks to 3 feet and 0 feet for the construction of a detached garage for the property located at 410 West Linden 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?

Lake Second.

Mundy Thank you Mr. Lake. All those in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

That variance is approved. Variance 2 –

Postlethwait I move that Docket Number 2023-12-DSV, Development Standards Variance to provide for a deviation of the aggregate side yard setback to 3 feet for the construction of a detached garage for the property located at 410 West Linden 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, was that Mr. Pickell?

Lake Yes it was.

Mundy Thank you. All those in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.

[No response]

Variance number 2 is approved.

Postlethwait Should I make it a clean sweep?

Lake Go for it.

Postlethwait I move that Docket Number 2023-12-DSV, Development Standards Variance DSV to provide for the memorialization of the existing driveway which deviates from the side yard setback to 0 feet for the property located at 410 West Linden 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, substantial compliance with the submitted site plan.

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

Lake Second.

Mundy Thank you Mr. Lake. All those in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

Variance #3 is approved. Your project is approved and, again, I would mention contacting the utility before you start construction. Best of luck.

Lykens Thank you for your time.

Postlethwait Thank you.

Mundy Next item on the agenda is Docket Number 2023-13-DSV, D. Snyder at 4255 Strathmore Lane, Zionsville. Petition for a Development Standard Variance to decrease the rear setback to provide for a swimming pool in the Holliday Farms Planned Unit Development. Staff, could we have the report from you?

Baker Yes. Also, this property is under construction and has had an active ILP on the property for the single-family residence. The petitioner is proposing an inground swimming, swimming pool which encroaches into the 30-foot minimum rear, rear setback line. Per the petitioner and site plan, a request is for a 26 foot and 8-inch rear yard setback which would encroach 3 feet and 4 inches into the required rear yard setback. The proposed pool wall would meet the 30-foot rear yard setback but the concrete pool deck would be 26 foot 8 inches at its closest from the rear property line. Again, referencing that the Town accommodates for different accessory structure setbacks in most residential zoning districts, however, that is not given in the Holliday Farms current PUD. It is staff's interpretation and opinion that strict application of the PUD does not result in unnecessary hardship in the use of the property. The site is not unique or provide

any unusual circumstances of the condition of the site. The building permit was issued in August of 2021 and the location of the swimming pool and attached pool deck were not identified on the plot plan at that time. Options remain for the petitioner to move the pool, reduce the size and/or reduce the size of the concrete pool deck. Based on how the PUD Ordinance is written today, staff is unfavorable of the request and I'm happy to answer any questions.

Mundy Thank you. Any questions for staff? Hearing none, is there a representative for the Snyders here? State your name and address please.

Hermon Yeah, my name is Tyler Hermon. I'm representing Pools of Fun, the contracted company for the pool. Our office address is 3891 Clarks Creek Road in Plainfield 46168.

Mundy Thank you. If you would – you've heard the staff report, probably had seen it before arriving tonight, give us some additional background. Anything that you think might be helpful in considering this petition.

Hermon Yeah. As the, the first plan was drawn per our customer's likings, we had the pool and concrete and everything out past the building line. We, we indicated to him that that ask is too large. If you look at the plan we're, I think, 11 feet out off the house now. We started almost 15 or 17 feet out off the house. We consulted him to try and pull that back in to minimize our ask. Our main goal at that point was certainly to keep the pool inside of the BSL hoping that just a couple feet of concrete would not cause any problems on neighboring properties, devalue anybody. The purpose of the size of the pool and the purpose of the, the size of the area around it – large family who likes to entertain, needs a big pool, needs a bigger patio for that. We picked the 11 foot 4 off the house simply to allow for furniture, lounge, lounge chairs to fit without making it a very tight walkway between the pool and the house. But, again, we, our, our main goal was to try and keep as much inside of that setback specifically for the pool itself to be inside of that setback only asking for 3 foot 4 of concrete.

Mundy Okay. Thank you. Any questions for the petitioner, petitioner's representative?

Postlethwait Did you, given that you do this for a living you, you obviously deal with setback lines in various settings. Did you have a conversation with the folks in the Planning office when you were discussing the siting of this pool?

Hermon We, I don't think we had discussion with them. We, we gave them our own consult to the homeowner knowing the best thing we can do is to reduce the ask. I don't know that the homeowner spent any time in the Planning office or not but we certainly took that into account and, and really encouraged the move back in so that the ask was significantly less.

Postlethwait So they understood that there was a 30-foot setback at the back, at the rear?

Hermon I, I can't speak on their behalf but I would, I would assume that with it being labeled on the plot plan but I don't, I don't believe this was planned at the time of construction. I think this is something they've decided to add after the plan so, yeah.

- Mundy Any other questions for the petitioner's representative?
- Jones Real quick – the grade behind this house actually rises, correct?
- Hermon Yes.
- Jones So then outside of the concrete you're asking for they're still going to need an additional retainage wall to change that grade, correct?
- Hermon Does it slope? It slopes down.
- Jones It slopes up. It slopes down or slopes up?
- Dale We need him up –
- Mundy If you'd come to the microphone and give us your name so that we can for the sake of getting minutes of the meeting.
- Smith My name is Jake Smith. I work with Pools of Fun and I've been working with the Snyders. The property slopes downward until the property line which it then moves upward onto the golf course.
- Lake I think what you're seeing, Larry, is the existing grade –
- Jones Uh huh –
- Lake Not, not as it's graded for construction. I saw the, I noticed the same thing.
- Jones All right.
- Lake I was, I was thinking the same thing.
- Jones Got it. Okay.
- Lake Yeah.
- Mundy So you, you got your answer, Larry?
- Jones Correct, yeah.
- Mundy Any other questions for the petitioner's representative? Hearing none, is there anyone here who wishes to speak for or against this project? Anyone online? Thank you. Any further discussion among the Board?
- Postlethwait I, I would just comment that it seems to me and I'm looking at this as almost a half an acre lot here and, again, this seems to be a case of inconvenience versus hardship and I, I suspect that we'll that more of these will arise as this Holliday Farms has more construction as people want to be able to maximize what they can have in their backyard. So, like Larry, I think if, in fact, the homeowners are unhappy with that 30-foot setback or the 25-foot setback that exists in some of

the other parts of Holliday Farms, perhaps they should be organizing to petition the Plan Commission to change the ordinance but I, I'm, I'm disinclined to be the arbiter of essentially what is a standard that's been put in place in that PUD. So I'm fearful that we'll have 20 of these so.

Mundy Well we started with four on tonight's agenda –

Postlethwait Right.

Mundy So –

Postlethwait We're well on our way to that 20.

Dale Just a couple more.

Mundy And it, it has, I believe, it has been noted on each of these, which I think you would've seen and, and this really is not something that would be probably for the pool company to do but there is the possibility of, if Holliday Farms wishes to make an amendment, a change to their Planned Unit Development, that can be done and seen by the Plan Commission and as you've probably already heard this evening, that probably would entail making certain that those changes don't also adversely affect drainage or anything else but that's part of what assures the homeowner that they have a good plan and they're building in a, a development that's taken care of that so.

Jones Do you want a motion?

Mundy Yes please.

Jones I move that Docket 2023-13-DSV, Development Standards Variance to provide for a deviation of the rear yard setback to 26 feet 8 inch feet for the construction of a swimming pool for the property located at 4255 Strathmore Lane in the Holliday Farms Planned Unit Development be denied as presented and described.

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

Postlethwait Second.

Mundy Thank you Mrs. Postlethwait. All those in favor of denial please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

So the petition is denied and, obviously, you can take other routes to correct that
–

Hermon Yeah.

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- Mundy So that your, the homeowner –
- Hermon Is, is there –
- Mundy Will be able to do something.
- Hermon May I ask a question in, in follow-up to that? I, I think you said earlier that these are all looked at individually and I certainly respect that. I'm not challenging your, your vote. I'm looking on how to consult our customers moving forward. I understand that your vote is higher than what the HOA and Mr. Henke is telling the folks in that community that as long as it is less than 5 feet of an encroachment they're going to pass it every time. Obviously, that's him and not you. My question to you is, I understand that something was approved in January for this same situation. May I, may I ask or can someone follow up with what the conditions of that approval was versus what we're asking for now because it seems, it seems the –
- Dale Yeah.
- Hermon It seems it's just a hard no now no matter what but it was previously approved.
- Dale Yeah, the conditional situation with that previous project is different.
- Hermon Okay.
- Dale The Town had issued a permit –
- Hermon Okay.
- Dale For that pool at that location and likewise the Town did not place a stop work order on the pool so the property owner, in good faith, proceeded with building the pool into a setback –
- Hermon Okay.
- Dale With the, under a permit and so there was, when the project came to this Board, the Board looked at that as a hardship the fact that there was practical –
- Hermon Understood.
- Dale Difficulty imposed on that landowner so.
- Hermon Yep, very fair answer.
- Dale Yeah.
- Hermon Thank you guys very much.
- Postlethwait Thank you.
- Lake Yep.

- Mundy You're welcome.
- Jones Just to be clear – on stuff like that we do have the right not to grant a variance to cover that stuff up at which point the pool gets removed.
- Clutter Absolutely.
- Jones Okay.
- Mundy I, I guess based, I had not heard this if it's within 5 feet but if, if, if indeed that is the position that the developer is taking they could amend their PUD Ordinance and allow that to be done without –
- Jones Yeah.
- Mundy The ARB or the BZA reviewing it.
- Postlethwait I, I think I would recommend that the homeowners go to the developer and explain to him that as much as he's granting, he's granting the permission to do this and, in fact, that's not the way this is determined. And, in fact, if he feels that it's fine that, that they're encroaching on the setback then they should moderate or change the, the current ordinance rather than his giving permission one person at a time there so.
- Mundy I agree.
- Postlethwait Yeah, I know.
- Mundy I think perhaps you can be the messenger for us.
- Hermon That'd be great. Just to make sure I understand that right – you, you're saying, I mean, if, it's the Board's position that if he wants to take the stance to reduce setbacks to allow more of this you are going to require drainage studies and everything else? I mean this isn't something that would be done without that.
- Postlethwait I think that would be up to the Plan Commission if they came and approached –
- Mundy Yeah, that would be the Plan Commission. We do have two Plan Commission members on the BZA but it would be the full Plan Commission, I think, that would have to make that decision.
- Lake And I don't disagree with Larry's position. If you, if you don't have the lot coverage requirements, your assumption is that your buildable area is everything inside the setbacks. If you move the setbacks out, you then increase the buildable area which means you would have to calculate for additional runoff. So I, I – his logic is spot on.
- Mundy Holds water?
- Lake Yeah. Or doesn't.

- Clutter Or doesn't.
- Lake Depending on how big the lines are.
- Hermon And, and should that be approved – longshot obviously – should that be approved, the existing plot plans that show a 30-foot setback, will they need to be re-surveyed or will this be something that we could still show on a 30-foot setback? Again, I'm just asking for future reference.
- Dale That, that 30-foot setback would probably be removed or relocated to the 25 foot or 20-foot setback.
- Hermon But what about on an existing survey?
- Dale That would no longer be accurate.
- Hermon Okay. So it's had to be re-surveyed? Okay. All right. Thanks again.
- Dale You're welcome.
- Mundy You're welcome.

The next item on the dock, agenda is Docket Number 2023-14-DSV, M. Breidenstein, 445 West Walnut Street in Zionsville. Petition for Development Standard Variance to provide for a deck, walkway and firepit which exceed the allowable lot coverage in the Urban Village Residential Zoning District (R-V). Staff, could we have a report on that please?

- Baker Yes. The petitioner is proposing to construct a deck, firepit with patio and a walkway with pervious pavers. Currently the, the residence is under construction. The 2% increase for pervious material can be utilized because they're using pavers, therefore, bringing the permitted lot coverage to 37%. The petitioner is requesting a proposed lot coverage of 42%. The request to occupy the site with improvements associated with the deck, firepit, paver patios in excess of lot coverage is not uncommon in the R-V Zoning District. The request is seeking to improve the site with uses commonly enjoyed in other properties in the area, also other properties in the area also enjoy deviations of lot coverage requirements. Also noting that the improvements are pervious and not impervious structures or covered, staff gives this a favorable recommendation and I'm happy to answer any questions.
- Mundy Thank you. Any questions for staff?
- Jones This is the one we got the letter regarding the deed gap, correct?
- Baker No, that's the last one.
- Clutter That's the last one.
- Mundy That's the next one.

- Jones All right.
- Postlethwait I do have a question – in the, in their narrative they talked about a fairly sophisticated way to handle drainage, increased drainage because of the, the slope of the property are, if this would be improved, approved will we need to, to stipulate that that program will be followed?
- Baker Yes, that’s up to you all. I had reached out to the petitioner and DPW and have not received any official comment regarding drainage so maybe the petitioner can speak more to that but I think you all are open to putting any conditions you want to regarding drainage.
- Lake So, asking our counsel, if the petitioner provides a letter stating, which they did, stating that they’re installing these as part of the project, they are then obligated, if we approve the petition, to install them?
- Clutter Correct.
- Lake Yep.
- Postlethwait Okay, so.
- Mundy Sorry, Larry – it’s not the next one it’s the –
- Postlethwait Last one.
- Mundy Second one after this.
- Postlethwait I’ll wait.
- Jones Will you, will you poke me a little?
- Mundy All right, any further questions for staff? Hearing none, are the Breidensteins here?
- Breidenstein Yeah.
- Mundy If you’d come to the podium and state your name and address please and then give us any additional information that might be helpful to us to make this decision.
- Breidenstein Of course I will. My name is Martin Breidenstein. I live at 11031 Brentwood Avenue, Zionsville, Indiana. I’ll just start out by saying that my wife and I have always wanted to live in town and we live in Coventry Ridge right now. It’s over by Zionsville, I mean Azionaqua and I’m retired now and we’re going to live in a house that we expect to age in place in.
- We found the lot and the house that was on it needed to be taken down because the foundation was crumbling and stuff like that so we did that. We put the house on the lot and I worked with Suzanne about the variances and, and lot coverages

and stuff and then we ran into the, after we built the house, it has a detached garage in the back and rather than take it down, we just refurbished it and made it look nice again but that caused us to have difficulty with lot coverage. So I'm asking the Board for the opportunity to put in the deck, the walkway that would go from the back of the house to the garage, throw in a firepit and there, there's a little explanation on that here in just a moment, that gets us over, a little bit over the lot coverage.

I had, originally I had an architect kind of give me some ideas on a plan and we, we started with that and you should have that with you. Evan Anderson has that and then I talked with a professional landscaper about making it a little bit better because my neighbor he was getting a lot of water from, from the runoff because we do have about 3 to 4 feet of pitch from the one side of the house to the other on the lot and so designing this with the professional landscaper helped us to, that I hope, we can mitigate the runoff problems. So we have a couple of different things. There's the flow wells for the, will be installed for the downspouts. We've got the subwater from the sump pump that will go into a, a gravel well and then the, the actually the firepit with a wall on one side actually raises up the, the aggregate level of the lot so that we can maybe keep, keep some runoff from going onto the other, other lots that, that are, they are actually east of us but kind of downwind, if you will. Well, I'm also looking at trying to allow those, if I can fit it in, we want to put another gravel well right next to the garage and funnel water into there and then that will go out so that we, as best as possible, mitigate the water flow during drainage and stuff like that and that's the reason for that, for the plan and one of the reasons for the overage on the lot coverage. Do you have any questions?

Mundy Question for the petitioner? I can tell you I think most of us are appreciative of the fact that you took into consideration the, the drainage issues that do occur in the Village and we have at least one drainage expert on the, the Board here who I think if he hadn't heard some of this he probably would've been asking so. Thank you for that.

Breidenstein I did actually call them. I talked to the Storm Department and I talked to Bobby, I think it was, and he, we talked and, and actually the Tesco drainage stuff was approved by the Storm Department at one point. So I kind of tried to work with people ahead of time so because I'd really like to have permission to do this.

Mundy It usually pays off.

Breidenstein Okay.

Mundy Thank you. If there are no other questions are there any remonstrators here or online who wish to speak for or against the project? Seeing none, is there any further discussion among the Board?

Jones I guess though, so what I want to confirm is that the, the gravel sumps and everything that you described here are basically items that you're intending to do but aren't really designed as of yet. Is that correct?

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Breidenstein Well I don't know that – yes they, well they're, they're on the plan. I did have to move the one from the Tesco plan because the professional landscaper said that it needed to be moved a little bit to the right or left but it's only, I'm thinking only 6 to 8 feet is, we're still going to follow the plan.

Jones Okay. So previously when we've had these kind of projects come before us for an increase in lot coverage with an offset of I think some sort of stormwater retainage on the site, we've actually as part of the package, received the design from the, the, I was trying to think what engineering firm put those together –

Lake Badger.

Jones Badger, yeah.

Lake And those were significant overages.

Jones Okay.

Lake We've done numerous in the 40, low 40s that haven't, we haven't asked for and they haven't provided additional drainage.

Jones And that was one that was getting up close to 50%, correct?

Lake Yeah and maybe even north of –

Jones Yeah.

Lake 50 on one of them, 55.

Mundy If there's no further discussion, is there a motion to be made?

Lake Sure. I move that Docket Number 2023-14-DSV, Development Standards Variance to provide for an increase in lot coverage to 42% for the construction of a deck, firepit and pervious patio for the property located at 445 West Walnut 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 plans.

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

Postlethwait Second.

Mundy Thank you Mrs. Postlethwait. All those in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

Best of luck with your project Mr. Breidenstein.

- Breidenstein Thank you very much.
- Lake Thanks.
- Mundy Next item on the agenda is Docket Number 2023-15-DSV, E. Grasee.
- Schutt Grasee.
- Mundy Grasee. 3963 Club Ridge Estates in Zionsville. Petition for a Development Standard Variance to decrease the rear setback to provide for a swimming pool, spa and patio in the Holliday Farms Planned Unit Development. Staff, could we have your report?
- Baker Yes, thank you. Currently, there is a single-family residence being constructed on this parcel which has been permitted. The petitioner is proposing an inground swimming pool which encroaches on the 30-foot minimum rear setback line. Per the petitioner and the site plan, the request is for a 25-foot rear yard setback which would encroach 5 feet into the setback line to accommodate for both the pool deck and a patio. Again, the Town Zoning Ordinance, within the Town Zoning Ordinance we allow for different setbacks for accessory structures and Holliday Farms does not give accommodations for those. It's staff's opinion that strict application of the PUD does not result in an unnecessary hardship in the use of the property, the site does, is not unique or provide any unusual circumstances of the condition of the site, the building permit for the residence was issued in August of 2021 and the location of the swimming pool and attached pool deck were identified on the plot plan at that time and showed that the accessory structures were meeting the required setbacks again at that time. Options remain open to the petitioner to move the, to move the pool, reduce the size or reduce the size of the concrete pool deck or patio. Based on how the PUD Ordinance is currently written today, staff is unfavorable of the request and I'm happy to answer any questions.
- Mundy Thank you. Questions for staff? You say on the initial filing of the plan it did meet the setback requirements?
- Baker Yeah, based from what I could tell on the plot plan, they, they showed a pool and a patio and it did meet the required setbacks at that time.
- Mundy If there are no other questions, could the petitioner come to the microphone please? If you'd give us your name and address please and then provide us with information that you think will be important for us to know for this petition.
- Schutt My name is Sammi Schutt. I am a representative of P.J.E. Lawn Care & Landscaping who is the designer and project builder of this project or proposed project at 4141 Kingman Drive, Indianapolis 46226. We are requesting a variance into the setback. It's currently marked at 30 foot and we are requesting a 25-foot, so we're just going in 5 feet. Our patio space does fall within the 30-foot setback with an amount of 45 square feet of patio space. The reason this really came about was the, once the pool permit was to be looked at or the pool was going in for permitting, the only space that they had a question about was the

corner next to the pool deck or that was the pool deck, the 30-foot space. It was brought to my attention the other 15-ish square foot space of their little firepit patio and we have been able to get the pool permit for that project in the end so we are just looking for the Town's approval to go into the setback of the 5 feet. I definitely understand that the BZA and the HOA are complete separate entities and that even if the BZA does approve it, it doesn't necessarily mean that the HOA will. We have not had any issues with the HOA. They haven't come back and said no. I personally did not do the petition with the HOA. Our home builder did and we didn't get any denial or anything from them that I am aware of. So I'm really just looking to hopefully get this approved.

Mundy Okay, thank you. Any questions for petitioner's representative?

Postlethwait I have a question and that is based on the, the plot that was submitted when they pulled the original permit, this is scope, is this a scope creep? I mean, is this just so much bigger of a project than it was originally when it was first presented to get the permits because there's, it looks to me as if they've added a number of things here that have created the problem and encroaching on the setback. Is that fair to say?

Schutt Yes. I would say that the homeowners were looking for more entertaining space. They are doctors and they own their own practices so they're going to host quite often. They also have a few kids so entertaining space is very important to them so that's why they wanted to extend their opportunities to use their space.

Jones What, what grade does this pool sit at? Is it at the basement level or closer to the first floor or somewhere in between?

Schutt From my knowledge of reading prints, it would be plus – the basement walkout is -18 from the basement and the pool elevation is +90 inches so it would be a bit higher so.

Jones So are there retainage walls then built around this thing?

Schutt Yes.

Jones And those will then further encroach across the building setback line?

Schutt Yes but that, we weren't, that was never questioned in our, or brought up in our working for this.

Jones It's getting questioned now.

Schutt Yeah.

Postlethwait Well the HOA, in other words, the HOA didn't question it?

Schutt No.

Postlethwait Well, it's not their job.

Schutt Right.

Lake The retaining wall is not an accessory structure.

Jones It's structural though.

Lake You can have a retaining wall at your property – staff –

Baker From what I, and someone correct me if I'm wrong, but from what I understand that fences and retaining walls aren't, they don't have to meet setbacks.

Clutter Correct.

Lake Now they, there's an issue if they are in the utility easement.

Clutter Uh huh –

Baker Yes.

Clutter Yes.

Jones Well –

Clutter Or a drainage easement or –

Lake Or yeah, yeah.

Clutter Drainage easement.

Lake Drainage utility, yeah.

Jones The issue and, once again, I've got the same issue when you come to the, the basement windows that allow for basement bedrooms.

Clutter Uh huh.

Jones There's a difference between a retainage wall that is there for landscaping purposes where the structure of the basement, it's a structure of the residence falls within the setback lines yet a landscaping wall carries over it – the over/under I've always put to anything is if you can dig it out and put it back without structurally affecting the nature of whatever it's supporting. So if you dig out a landscaping retainage wall that crosses over a setback or into a utility easement, it can be put back. It's inconvenient but it does not structurally affect the residence. This situation with the pool where it sits at this grade, take out those retainage walls the pool collapses. It means they're structural which means they should be included in whatever we're seeing. We're back to the same issue. Originally they submitted a set of drawings that met the needs, met the requirements, were with, within the setback and now they increased or expanded or changed their plan. It's, it just doesn't mean a hardship.

- Lake Yeah, the plot plan showed the pool at 20 x 36. The pool is 20 x 40 so there's some of your, the tip of your triangle poking out over the, over the line and you could easily slide the pool south to get this out of the, out of the line just like you could take the four, four little seats at the firepit and slide it – I said south, plan south, not quite true south. To your point, not necessarily a hardship, an inconvenience to Mrs. Postlethwait's previous comment.
- Mundy Any other questions for the petitioner's representative? Do we have anyone who wishes to speak for or against this project? Online? No? Thank you. Was there a, a conclusion on the retaining wall there? I, I followed with if you could take it out and replace it and it didn't affect the, the residence.
- Jones Well my core issue is what we're presented doesn't really represent what they intend to build.
- Mundy Okay.
- Jones That, that's item number one for me which, you know – so. You want me to make the motion and we can answer my own question.
- Mundy Well we'll need a motion –
- Jones Well let me answer my own question. I move that Docket 2023-15-DSV, Development Standards Variance to provide for a deviation of the rear yard setback to 25 feet for the construction of a pool deck, patio for the property located at 3963 Club Ridge Estates in the Holliday Farms Planned Unit Development be denied as presented and described.
- Mundy Thank you Mr. Jones. Is there a second to that motion?
- Postlethwait Second.
- Mundy Thank you Mrs. Postlethwait. There's a motion to deny Docket Number 2023-15-DSV that has been made and seconded. All those in favor of denial please indicate by saying aye.
- All Aye.
- Mundy Opposed same sign.
[No response]
- Well the motion is denied, the petition is denied and I guess – Mike, I think it may be worthwhile that we have a little discussion later about how we go back to the developer –
- Dale Uh huh –
- Mundy With an understanding of what we're faced with and one approach that they could take.
- Dale Yes.

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Postlethwait And part of that is, is a difference in information that they're receiving there –

Dale Yeah.

Postlethwait Is not helpful.

Dale Right, okay.

Lake And you've got clients that are spending money on design –

Postlethwait Right.

Lake Spending money on potentially attorneys coming in here to, to file these petitions because their developer just says go do it –

Dale Right.

Postlethwait Yeah.

Mundy Uh huh, yeah.

Dale Great.

Postlethwait That is a hardship.

Mundy We're creating a hardship.

Pickell Yeah.

Dale They're creating the hardship, yeah.

Mundy All right.

Postlethwait Now.

Mundy Thank you.

Jones Now?

Postlethwait Now.

Mundy The last item on the agenda –

Jones Yeah, yeah, yeah, yeah.

Mundy Docket Number 2023-16-DSV, S. Gorg – well I won't, I won't, try not to massacre your name – Gorgievski?

Peters Yes, he's my client I'm representing here.

- Mundy Oh, okay. I haven't insulted you. At 365 West Cedar Street, Zionsville, Indiana. Petition for Development Standard Variance to provide for a home addition which: 1) Deviates from lot coverage; 2) Deviates from the aggregate side setbacks; and 3) Memorializes an existing side yard setback of the single-family residential home in the Urban Village Zoning District (R-V). Staff, could we have your report please?
- Baker Yes. The petitioner is proposing to construct a 150 square foot one story addition to the east side of the property to accommodate for a bedroom addition. The proposed addition will necessitate a variance of the aggregate side yard and lot coverage. The proposed addition will be 5 feet from the east side and then the existing setback on the west side is 3 feet thus making the aggregate 8 feet and not meeting the 15-foot aggregate. Also with the addition, it brings the lot coverage to 40%. Permitted lot coverage at this location is 37% due to the existing brick paver patios. Lastly, there is a request to memorialize the existing side yard setback on the west side which the residence is 3 feet from the property line. The request in excess in lot coverage and aggregate is not uncommon in this, in the R-V Zoning District. Given the unique and historic characteristics of the property along with the scale and placement of the existing improvements, staff is favorable of the request. Further, back to Larry's point, we had received a letter from a neighbor kind of concerned with the survey being inaccurate versus the plot plan. Again, typically the Town doesn't get involved with property line concerns or disputes. However, the petitioner has, has told me that they plan to do a survey before getting the improvement location permit but he can probably speak more to that and with that I'm happy to answer any questions.
- Mundy Thank you. Any questions for staff? Hearing none, the petitioner's representative is here. If you could state your name and address and then give us any relative information that you think we need to have to make a decision please.
- Peters Yeah, good evening. I'm Mark Peters, 6995 Covington Street, Lebanon 46052. I'm a semi-retired architect helping Stephen Gorgievski draw up his little documents for a variance and for a building permit for ABG Constructor to, if allowed to do the, the, the bedroom addition. When we prepared the drawing, we started with a set of drawings prepared for this property several years ago so my property line dimensions have to be reconciled and that's what Susan's talking to. We had the plot plan, the deed from Boone County and we also had the acquisition, they can see of the alley and we didn't have that included by Boone County in the total plot plan so a couple of things have happened and, and then our neighbor was talking to him and he did then provide this letter to Hahn Surveying, put property stakes on the east side of our property, the side of which our addition is going to go to, and they did his part of this east line. We have a property iron stake on our west side so I've got to reconcile those and I do want to say we have set the 5-foot setback line from the property, property line and that's what we will have to meet so we don't have to build over and come back and plead a hardship on – I don't want to do that and you don't either but I, I will reconcile those dimensions with Hahn's survey with the steel pins and I'll prepare a document and my, my question is we have the steel pins located and we will do an accurate dimension and setback and dimensions of the house. Now I'm an architect. I could do the drawing and certify it or should I have Deckard Engineering prepare the plot plan based on that information? I'll leave it up to

you. I can do it. I'm, I don't think it's a gray area here. The pins are set so I'll come back in a month with that unless you would allow me to let Susan act on it but I'll leave it to you to give me direction on how you'd like me to proceed.

- Mundy All right, thank you Mr. Peters. I think surely we'll, we'll be able to come up with an answer to how you should proceed before leaving this evening but are there any other questions that the, the Board might have for the petitioner's representative? I think you were holding up this drawing which was the old survey, is that correct?
- Peters That, that one is from the, the neighbor. It's the east side which the property steel iron pins are located and painted and then on our plot plan at the far, okay let's see so, so here's Cedar Street. You're looking at the Hahn survey for here and the steel pins are set here and here and there's a steel pin set on Stephen's lot so we have the, the exact dimension and we, if we sur, lined it up this way we're looking for a building addition of, it's going to be less than 12 feet. I've got 12 there but I would, I'm going to say we'll, it will be 5 feet plus a few inches just so we have a little bit of cushion there. We'll meet the setback line and the pins are there. I think I, I can do this if you'll let me.
- Mundy Thank you.
- Postlethwait Mr. President, I have a question – can we go forward when given that there would be inaccuracies in the petition as it's been submitted? I mean, where we're talking about a, a difference in what the existing setback would be. I mean, does it need to be modified or amended or what's?
- Lake So along that line I, I, I think though the plan shows a 5-foot setback. So what would be inaccurate is that the addition would be slightly smaller –
- Postlethwait Right.
- Lake And the lot coverage would be slightly smaller. So I think, I'm wondering if we can approve it noting that the plans show a 5-foot setback –
- Clutter You can.
- Lake And that the homeowner provide an as-built survey to the Planning Department upon completion of the project.
- Peters We can do that.
- Clutter You can certainly do that knowing as, as Mr. Roberts noticed that the discrepancy if it is not resolved in your favor or your client's favor the building addition will be a little bit smaller just to meet that 5-foot setback requirement.
- Peters Yeah and he understands that but we also understand we have to be at the 5-foot or greater setback so yeah. Very conscientious of that.
- Mundy So we could approve this with the 5-foot setback and the confirmation of the survey would determine how large that addition will be?

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Clutter Correct.

Jones I mean, the Hahn survey ought to show both the property corners and the existing house.

Peters I –

Lake If they –

Peters They show the lot on the east side. Again, we are – if, if here’s –

Mundy Could you stay close to the microphone please?

Peters Okay, yeah. If here’s Cedar Street. Thank you. This is our site 365 Cedar Street and –

Clutter You can use the overhead that, that might –

Peters Oh – oh, okay, cool. Okay. Okay. Okay. North being then to the left. We have Cedar Street and then here is the building addition and the Hahn survey is through this property across the east side. So the Hahn survey establishes the steel pin at the corner and at the north end and at the south end and our property line noted by the black dot is now half of the 10-foot alley vacate and that, that deed and that, that was amended in this paper from Boone County. They added, just a few weeks ago, it was approved by Zionsville several years ago but they’re just catching up to the lot deed correction so, again, and I would, I would assure you that the 5-foot setback line will be adhered to, we will reconcile the dimensions and we will, we will construct this 5 feet off the property line to meet or exceed the 5-foot setback.

Mundy The homeowner is aware that should there be, should his neighbor be correct that he will wind up with a smaller addition?

Peters Yes. Well, he, he and I, the three of us talked last week and he says this is fine with me and he says I’ve got something to share and I said yeah, I know we’re, we may be smaller so we’ve already had that discussion and there’s really no wiggle room about it. We have to be behind the setback lines.

Dale Will there be an eave on the structure?

Peters A what?

Dale An eave? Will there be an eave? An overhang? Eave.

Peters Yeah, 12 inches. It, it, I mean the building setback line is to the building or the eave.

Dale That’s my question too. I, I don’t know the answer to that.

Jones Building.

Lake Building.

Clutter I think it's the building.

Baker Building.

Dale Is it from the footer?

Lake 1:42:38 a wall.

Peters Some, some places do the eave –

Dale Right.

Peters I'm well aware of that –

Dale Okay.

Peters And I didn't see that but –

Mundy That's in your favor this time.

Jones To just clarify – Hahn Surveying has surveyed lot and put pins out for lot 127 –

Peters Right.

Jones The lot to the east.

Peters Right.

Jones But the lot 126, your client's, has never been surveyed?

Peters No, but the, again, the property pins are there so a surveyor could come out and locate those pins and establish the plot plan.

Jones So the –

Peters Or I could it or it's, it's, it's obvious –

Jones Well I guess the, the fix is is to have and not, okay, all right. I'm familiar with working around what's called a deed gap where the legal description for one piece of property and the legal description from two leave either a overlap or a void between the two properties and that's basically what we've got going on here. What's happen, what I'm hearing is that what we're trying to do is rely on the pins that have been put in place for lot 127 to determine where lot 126 is.

Lake Yeah and, and it sounds to me like Boone County's old survey just doesn't have, it has some dimensional inaccuracies. Probably not at the edges of the property but probably from the property lines to the building structures.

- Jones Okay.
- Lake And so what was referenced is what was available and the home, the homeowner next door, you know, next door pointed out that he believes he sees something different which I think the, the petitioner recognizes to be –
- Jones Okay.
- Lake Accurate.
- Jones So the fix is to have Hahn or a surveyor provide a as-built survey of the existing residence. With that in hand then you'd have clarity whether or not the existing structure sits 12 feet off what is basically the old alley edge or not.
- Lake But when I said as-built, I was meaning after they built the addition, not before they built the addition.
- Jones I understand but that might be too late.
- Lake But, I mean –
- Jones But, but, but if you can clarify where the existing house sits and then that document can be used to clear all this up and then if that shows, you know, if you end up with, if, if you – and a quick question is so the, the alley that's been vacated do the legal descriptions then now incorporate that or is that what you were saying earlier that they're, they're lagging?
- Peters There is a legal description on the deed and alley vacate which was included in the, included, there's, there's the, the deed from Boone County on the lot and then the, the alley vacate and the first page the last several paragraphs it describes the, the beginning at the northeast corner of lot 127 and south therefore and thereto and –
- Jones So –
- Peters That's part of which Hahn Engineering used to locate the, the pins for the, the alley dimension so this document from Boone County.
- Lake The letter from the adjacent homeowner did provide a document number and an ordinance referencing the vacation of the alley.
- Mundy Yeah.
- Jones Okay.
- Lake And I don't know what was included in that document, whether they were surveys or –
- Baker I can clarify a little bit –
- Lake Sure.

- Baker About the vacation question. So the vacation did go through Town Council, I think, in 2019, however, when I got the BZA submittal, it didn't, on the Boone County GIS it did not show that it was vacated on their end. So since this petition has come before us, we've corrected that with Boone County so I don't know if it's up to date today –
- Lake Gotcha.
- Baker But they were working towards it because it wasn't done on their end yet.
- Clutter Normally they, so the Boone County Recorder's Office doesn't receive those unless they're forwarded to them by whether it was petitioner's attorney or the Town Council or whoever. I mean it happens not just in Zionsville but Whitestown and everywhere else. And so once the Boone County Recorder's Office receives it, they give it an instrument number and then they send it to the GIS Department so that the GIS can accurately reflect that, you know, half of the alley goes to each property owner. The deed itself is not automatically updated to include that. You would have to request a deed revision and so sometimes that happens, sometimes it doesn't but then, you know, when somebody goes to sell the property that's part of the title search process. They say okay here is the original lot description. Oh, I see that okay in 2019 the alley was vacated and so we're adding 5 feet to it. But the deed itself would not normally be updated without having an attorney file a new one.
- Postlethwait So I, I'm probably the least knowledgeable about, about surveying and so on sitting here but this all feels very squishy to me because it seems to me that what we're hearing is that there's not a firm and fast termination of what the property line is.
- Jones Correct.
- Postlethwait And –
- Lake Documented on paper.
- Postlethwait Well, but I mean, all right, I mean it's like 1:49:08 yeah we go right along. I mean that probably is, what we need is something that's documented on paper. In order to know what the setback is you need to know what the line is that's the property line and so we're talking about doing something to sort of make, sort of resolve the problem without actually resolving the problem in that it seems to me that the thing to do is to have that line surveyed and have a firm and fixed idea what the property line is and then you can determine whether we're giving the, the appropriate remediation here. I mean, I, I don't know. I don't understand the idea of saying okay well we can still go ahead even though we're not really certain what the property line is.
- Lake So the property line is firm and fixed. It is identified by the pins that exist onsite it's just not documented as such in the legally recorded documents. And so what they're suggest, what I'm suggesting is that as long as they use those pins to establish their 5-foot setback per their drawing and, and build their building so

that it is not within that 5-foot setback and then because he said it may be 5 foot, it may be 5 foot 3 inches because they don't want to, they don't want to be just right, you know, coming a –

Postlethwait Right.

Lake Few inches over is better then have them do the survey after it's built knowing that they must meet the 5 foot then we get a drawing that is of the as-built condition then, then we know to be true moving forward in the future.

Postlethwait Okay now it's –

Lake That was why I suggested that.

Postlethwait The pins that are in place in, include the vacated, half of the vacated alley or no?

Peters Yes, we, again, we in the month of March Suzanne said we don't have this quite correct so I visited Boone County Surveyor's Office and she amended the, the site this, this third page says lots 126 and 127 they're giving 5 feet of vacated alley to each of them and like you just said, they don't –

Jones Okay.

Peters This was done two years ago, given to them but they didn't have it in their books until I –

Postlethwait The pins that we're referencing also include the 5 feet of the alley? Vacated alley?

Jones No.

Lake It doesn't. It wouldn't matter if they did or not –

Jones Well –

Lake As long as they're set you can measure your 10 foot plus, plus the 5 foot to, to get to it. There just needs to be an understanding is it the existing property line location or is it the center alley location.

Jones And here's, here's where I'm grinding away at – what this document is and the pins that they're talking about and the surveying was done, was done for lot 127, the lot to the east of the lot you're working on. Correct?

Peters Correct.

Jones And the pins that are in place do not include the vacated alley area. Is that correct?

Peters Correct.

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- Jones The document though also shows that the barn or the garage that is on lot 126 sitting much closer to the alley than what is on the document we're being provided.
- Peters Yeah, correct. That barn location was hypothetically –
- Jones My, my statement and my, my – I think the request would clarify this is: 1) Have a survey done of lot 126, include the alley land, include the house and the existing garage and that should clarify because then once those pins are set, once, once lot 126 is truly surveyed and pinned and pin it including the alley, it should be 5 feet from the new pins to the old pins on lot 127. If there's a variance there then there's a deed gap or something's wonky. If they line up, if it lines up that there's a 5-foot difference then and then then he has an existing what I would call an as-built of the existing house in place he can use that moving forward. Now, if we want to grant a variance and as long as he provides that document confirming, we could grant the 5-foot, we could grant him the variance of the side yard setbacks he needs and all he needs to do then is go out and get a survey document. As architect he could add on the addition provided and it all meets. If after the survey though they find out there's some sort of either overlap between the property lines or gap between them, those two neighbors may need to clean that up and the problem may actually be with lot 127. They may be off.
- Lake So you just want to see – you're fine approving the petition; you just want to see the survey document revised and provided prior to construction versus after construction?
- Jones For lot 126.
- Lake Correct.
- Postlethwait And I were the person building it, I would want to be sure that –
- Peters Yeah, correct.
- Postlethwait There's not going to be some surprise –
- Peters Yeah.
- Postlethwait Down the road.
- Peters Oh yeah.
- Postlethwait I mean I'm just a conservative type of person –
- Lake Yeah, well and my, my suggestion was exactly what you're saying. That they have, somebody's got to survey –
- Postlethwait Right.
- Lake To figure out where to put the house.

- Postlethwait Right.
- Lake I'm just saying I have no, there's no need for me and I don't think there's any need for the Town to get a copy of that survey that doesn't have the actual built addition on it. Have them go ahead and survey it to locate where the property line is, build the addition but then provide that as-built survey with the addition after it's been done. Not a proposed drawing with the addition –
- Jones I understand.
- Lake Because they got to survey it either way.
- Jones But I'm saying –
- Lake I get what you're saying –
- Jones Get it pinned before.
- Lake The, the Town just ends up with the drawing not with an accurate addition on it with an assumed addition when we could have a drawing that has an actual addition.
- Jones We just saw a fairly modern structure at probably another couple of zeros that we had multiple site plans on so, I mean –
- Lake Yeah.
- Jones And those were off by dozens of feet –
- Lake So we're just bat, batting around –
- Dale I want to add that the, the survey question should be resolved before they get a building permit.
- Jones Correct.
- Postlethwait I, I agree.
- Dale Yeah.
- Jones Right.
- Peters Yeah, we can do that.
- Dale Because other, otherwise it might be too late.
- Mundy I think what everyone is saying is they need to have a survey –
- Postlethwait Right.
- Jones Correct.

- Mundy And what Chris is suggesting is we could have an after built but they have to have a survey to know where that 5 feet –
- Lake Right.
- Mundy Ends and –
- Jones And we can grant the variance –
- Postlethwait Right.
- Jones Now.
- Pickell I kind, I tend to agree with Chris that, that I would rather have an as-built for the Town at the end survey then a preliminary survey before the as-builts without knowing exactly where that's going to end up being. It's going to be a, I think you put a hardship on the property owner by doing it prior to but I, but I completely understand that we want to protect both property owners so but –
- Peters And I, I would like to go ahead and do it before we get the building permit because after the fact I don't want to be in a hole, but we, we missed by that much.
- Postlethwait Right. I think that's wise.
- Peters May I suggest this? I will get Deckard Civil Survey Engineering to prepare a plot plan. I will ask them to, the, the area of concern is our east property line and the, the concern is did Hahn set those pins for the adjacent property in the right spot and if they can certify that, that that's correct that would then establish our property line is correct because what I hear from my civil people is to go back through all the archives to try to find out what metes and bounds and descriptions were ever written 100 years ago or 10 years ago. It's a laborious task so if I could ask you if, if Hahn's survey certifies the pin locations and, and we could work off of that, that's, that's the line we're working towards with our addition. Would that be suitable?
- Jones That's fine.
- Lake You motion it.
- Jones Huh?
- Lake I said I'm going to let you motion it.
- Mundy Yeah, I think let's, well, are there any remonstrators? Did I ask that already?
- Lake No.
- Mundy I, I don't think so. The one that the neighbor is not online evidently so we've now satisfied all that and why don't we if, and I'm not sure who was offering up here

to, to forward a motion but let's have a motion. You'll be able to hear that motion and just want to make sure you understand it as well –

Peters Okay.

Mundy So that we don't have two property owners or one that's not dis, that is disappointed with the outcome.

Jones So do we just, should we make, should we continue it so you can go get the survey done?

Peters Yes, we can do that.

Jones Let's just do that.

Postlethwait I think that's the cleanest.

Jones Okay.

Postlethwait If they're willing to do that.

Jones All right.

Postlethwait It may not be the most –

Mundy We'll just hear it a second time but that is the most certain way of getting everything done right.

Jones Right.

Lake Do we have to read and continue each variance?

Dale Just continue them all.

Clutter Just the case number.

Lake Just the case number? All right.

Jones You got that in front of you?

Lake Huh?

Jones You got them in front? Mine's –

Lake I, I'll get them.

Postlethwait So all of them? Each of them?

Lake No, just –

Clutter No it's just the case number.

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Lake The case number.

Postlethwait Okay. I move that Docket Number 2023-16-DSV be continued. Is that sufficient?

Clutter To –

Dale To –

Clutter June 7th.

Postlethwait To, to the June 7th meeting.

Dale At 6:30 p.m.

Postlethwait At 6:30 p.m.

Pickell Second.

Mundy Thank you Mrs. Postlethwait. Thank you for the second Mr. Pickell. All those in favor please indicate by saying aye.

All Aye.

Mundy Opposed same sign.
[No response]

So the motion is continued to the June 7th meeting and during that time you'll have the survey confirmed for us that we'll know where the 5-yard setback is.

Peters We can do that. Thank you very much.

Dale Yeah, thank you.

Mundy Thank you. That brings us to the end. Is there anything else that we need to discuss?

Baker I have one comment if I may for the record – the petitions that were denied typically what we've done is continue them to the next meeting and the, our counsel has established those negative Findings of Fact to sign at the next meeting.

Mundy I, I think that is fine. We should just proceed with using that same approach. The other, which I suppose doesn't have to be part of the minutes of this meeting, but that is the follow-up with the developer there –

Dale Henke.

Mundy Correct.

Dale Uh huh.

Mundy Yeah, so that they understand what, why we've denied these and that they do have a remedy. It appears that they have already remedied it themselves but for us it's not a remedy.

Dale Uh huh and in addition to the false information that was perpetuated about it was a 5 foot over, a 5-foot encroachment somehow the BZA is going to grant those, yeah.

Jones Well that is, it's the same rules they have on the golf course. Within 5 feet of the hole it's, it's in.

Postlethwait I don't know where you play but that's not the way where I play I can tell you that.

Clutter Yeah, I wish, I wish –

Postlethwait I think the sad thing –

Jones After the first 12 pack you know –

Postlethwait People who based on that information will continue to spend money to make plans that –

Dale Yeah.

Postlethwait Ultimately then come to us and they're upset because we say no you can't do that so.

Pickell Yeah.

Mundy Exactly. All right, is there a motion to adjourn?

Lake So moved.

Jones So moved.

Postlethwait Second.

Mundy Thank you Mr. Lake and Mr. Jones. We'll consider one of those second. All in favor say aye.

All Aye.

Mundy We are adjourned.

Dale Thank you.

Postlethwait Good meeting.