



# Meeting Minutes

Whitestown BZA

**Date:** June 1, 2023

**Time:** 6:30pm

**Location:** Whitestown Municipal Complex, 6210 Veterans Drive Whitestown, IN 46075, (317) 769-6557

## Call to Order:

6:30pm

## Pledge of Allegiance

## Roll Call

- Mark Pascarella
- Phillip Snoeberger
- Ken Kingshill
- Coady Adams - **Absent**
- Andrew McGee
  
- Staff:
  - o Jill Conniff, Planning Staff
  - o Jonathan Hughes, WPC/WBZA Attorney

## Approve Agenda

*Motion to approve the agenda by Snoeberger. Second by Pascarella. Motion passes 4-0.*

*Motion to approve the 03/02/23 meeting minutes by Pascarella. Second by Snoeberger. Motion passes 4-0.*

## Public Comment for Items Not on the Agenda-**none**

## Presentations- **none**

## Unfinished Business

## New Business – Public Hearing

- a. **BZA23-002-VA Blue Beacon** – This item will be continued.
  
- b. **BZA23-003-VA Lennar Homes**
  - i. **Ty Rinehart** – Lennar Homes 11555 N Meridian – Went over issues discovered with home in Cardinal Pointe Development and reasons for requesting the variance. The home is too close to the property line and therefore not enough separation between the homes. Went over the conditions of the staff report a how they will comply. Stated that they made us aware as soon as they realized the mistake and are taking the proper steps to make sure it does not happen again.

- ii. **Jill Conniff -Staff Report** - Staff is providing an unfavorable recommendation for Lennar Homes 1. Reduction in the minimum setback side yard and 2. Reduction in the minimum distance between dwelling units Variances docket BZA23-003-VA. Staff's recommendation to the Board of Zoning Appeals finds the variance does not comply with the following requirements in accordance with UDO Section 11.14 F. 2. And is not consistent with Indiana Code IC36-7-4-918.5 and denial be based upon: The approval will be injurious to the public health, safety, morals, and general welfare of the community because: ***Approval of the variance will be injurious to the public health, safety, morals, and the general welfare because as currently constructed, the house does not meet zoning or building code standards. The structure is required to have walls with a 1-hour fire rating if less than five feet from the property line. The structure is not constructed to meet that code provision making it an unsafe structure for the neighboring residences.*** The use or value of the area adjacent to the property included in the variances will be affected in a substantially adverse manner because: ***The use or value of the surrounding area to the property will be negatively affected if the variance is approved because adjacent homes to the sides are no longer the required 10 feet from the structures as required by the PUD; this means the adjacent structure is also non-conforming. Good planning practice discourages the existence of non-conformities and encourages bringing them into conformance. By allowing the structure to remain out of conformity, future residents are negatively impacted by the nonconformance and increased risk of fire spreading.*** The strict application of the terms of the Ordinance will not result in practical difficulties as applied to the property for which the variance is sought because: ***The strict application of the ordinance does not result in practical difficulties because the need for the variance is due to the applicant's own noncompliance with the PUD. The structure was constructed not meeting the standards, it was not a hardship imposed by the code to comply. Allowing the variance opens the gates for future homes to not due their due diligence during construction then making similar mistakes. There are no practical site difficulties or physical site constraints that would have otherwise required the home to be constructed non-conforming.*** Both variance requests need to be voted on individually, denying one variance would be equivalent to denying both variances given their interconnected nature and the consistent findings criteria applied to both. If the Board of Zoning Appeals approves the requested variance, staff recommends the following conditions: The structure at 5169 Bayberry Court must be brought up to meet the building code including the 1-hr fire rated wall in the areas where the structure is less than 5 feet from the property line. The applicant must disclose the variances for the sites in question to future buyers of the houses. The applicant will record the official BZA findings of fact against the properties with the Boone County Recorder's Office.
- iii. **Phillip Snoeberger** – 5169 property is the one that will require a fire rating? No concern on the adjacent property?
- iv. **Ty Rinehart** – Yes and correct.
- v. **Ken Kingshill** – Question for staff – Where are we measuring?
- vi. **Jill Conniff** – At the foundation.
- vii. **Ken Kingshill** – What will happen if we deny?
- viii. **Ty Rinehart** – We will have to tear it down. Will cost about \$130,000.
- ix. **Phillip Snoeberger** – Asked how other homes are measured on other sites not as tight.

- x. **Ty Rinehart** – When there is more room, the foundation guys usually measure. When it needs to be dead on we measure.
- xi. **Andrew McGee** – You have built other homes in here correct?
- xii. **Ken Kingshill** – Stated that this is their PUD that they agreed to and these setbacks.
- xiii. **Ty Rinehart** – Yes and intended to stick to it, just a human error.
- xiv. **Phillip Snoeberger** – Is sensitive to error, but there is a lot of development going on in Whitestown and is concerned with setting precedence.
- xv. **Ty Rinehart** – This is not an ongoing problem, and they will bring it up to code. They informed the neighbors when they closed on the property, and they did not have an issue.
- xvi. **Andrew McGee** – Not a problem now but could be if there was a fire. Asked for clarification on the distance. We should not be responsible for a contractor’s mistake.
- xvii. **Jon Hughes** – Four inches for distance between the houses and the setback is between seven-eight inches.
- xviii. **Ken Kingshill** – Can we levy a fine?
- xix. **Jon Hughes** – No, could possibly do as a reasonable condition.
- xx. **Ty Rinehart** – We have stepped up and are trying to do the right thing. Seems extreme to have to tear home down.
- xxi. **Keith Lash** – VP land for Lennar Homes – Notified neighbors before they closed and gave them the option to wait, they chose to close. Only have good intentions. We aren’t going to throw a contractor under the bus, we are on the same team. Future buyers will be notified. Neighbors understand that their home is in compliance.
- xxii. **Ken Kingshill** – 5179 is the neighbor?
- xxiii. **Keith Lash** - Yes
- xxiv. **Phillip Snoeberger** – Proposal for one hour fire rating?
- xxv. **Ty Rinehart** – We have many options and need to get with the Town Building Department to make sure we choose the best option.
- xxvi. **Jon Hughes** – One home is closed and passed inspections. This house is where in the inspection process?
- xxvii. **Keith Lash** – It is fully framed; it was caught during that time. We decided to finish the framing and weatherproof and make it safe.
- xxviii. **Mark Pascarella** – Risk if there is a fire or something happens can the homeowner sue the Town because we approved this variance.
- xxix. **Jon Hughes** – No one showed up to remonstrate and they are aware of it. Anything that deviates from our standard would increase our liability. If we increase the fire standard I am less concerned.
- xxx. **Mark Pascarella** – Staff has indicated that it would be listed on the documents for future homeowners to be aware of before purchasing.
- xxxi. **Jon Hughes** – Yes and important that both houses are listed.
- xxxii. **Phillip Snoeberger** – Is the fire rating from Whitestown or the State?
- xxxiii. **Jill Conniff** – The State.
- xxxiv. **Jon Hughes** – The Town and State mirror each other.
- xxxv. **Ken Kingshill** – The 10 feet between homes, is there an issue with fire equipment?
- xxxvi. **Jill Conniff** – Don’t think it was written to have an issue with fire equipment.
- xxxvii. **Andrew McGee** – We don’t set precedence, but we build a lot of homes in Whitestown.
- xxxviii. **Jon Hughes** – Based on facts presented before us, not setting a precedence. We also have to treat everyone the same.
- xxxix. **Andrew McGee** – I appreciate that and appreciate the self-reporting.

- xl. **Phillip Snoeberger** – I deal with this in my job, a lot of times people don't understand the impact. The houses are already close together. If it was presented to me on a house I was buying it would give me great pause.
- xli. **Keith Lash** – To clarify, there is a two-part process, we stake home and trench footers. Once poured we pin footers. This was the part that was skipped. It was staked with survey equipment.
- xlii. **Ken Kingshill** – You self-reported and that was good. If you had not it would be a different story. My concern is if we deny the result, is an over punishment. Applying the criteria, it is a tough task.
- xliii. **Ty Rinehart** – It will be brought into compliance and code. There should not be an issue and should not present a problem in the future.
- xliv. **Andrew McGee** – You continued the framing.
- xlv. **Keith Lash** – We could have stopped and didn't want to leave it unsafe. We don't like to leave things unfinished. It was worth the risk to make it safe and then stop.
- xlvi. **Andrew McGee** – You didn't stop.
- xlvii. **Keith Lash** – We did stop after making it safe.
- xlviii. **Phillip Snoeberger** – Can you give me an idea of timeline.
- xlix. **Ty Rinehart** – I can't.
  - I. **Phillip Snoeberger** – If it was caught before framing would you have fixed it?
  - li. **Ty Rinehart** – We would have expanded the footers and moved the block. Once it was framed it was not an easy fix.
  - lii. **Phillip Snoeberger** – What was the timeline?
  - liii. **Keith Lash** – Don't know specifics, it is a pretty tight timeline.
  - liv. **Ken Kingshill** – Are you insured for something like this?
  - lv. **Keith Lash** – We are self-insured.
  - lvi. **Ken Kingshill** – The block mason was the one that made the mistake, are they third party?
  - lvii. **Keith Lash** – Yes, subcontractor.
  - lviii. **Ken Kingshill** – There is a reason for these rules and statutes and insurance.
  - lix. **Keith Lash** – We will have to have a conversation with our trade partners. They have been with us for 30 years, small businesses. We will deal with it one way or another.
  - lx. **Jon Hughes** – We will need findings in the motion.

*Motion to accept staff findings and deny request for setbacks by McGee. Second by Snoeberger. Motion locked 2-2.*

*Jon Hughes – Recommend motion to continue and take no more votes.*

*Motion to continue to the next meeting by McGee. Second by Pascarella. Motion passes 4-0.*

## **Announcements**

### **Adjournment**

7:09 pm

*Unanimous vote to adjourn.*

DocuSigned by:

*Andrew McGee*

Andrew McGee, President

DocuSigned by:

*Jill Conniff*

Jill Conniff, Planning Staff