



# Staff Report BZA23-003-VA

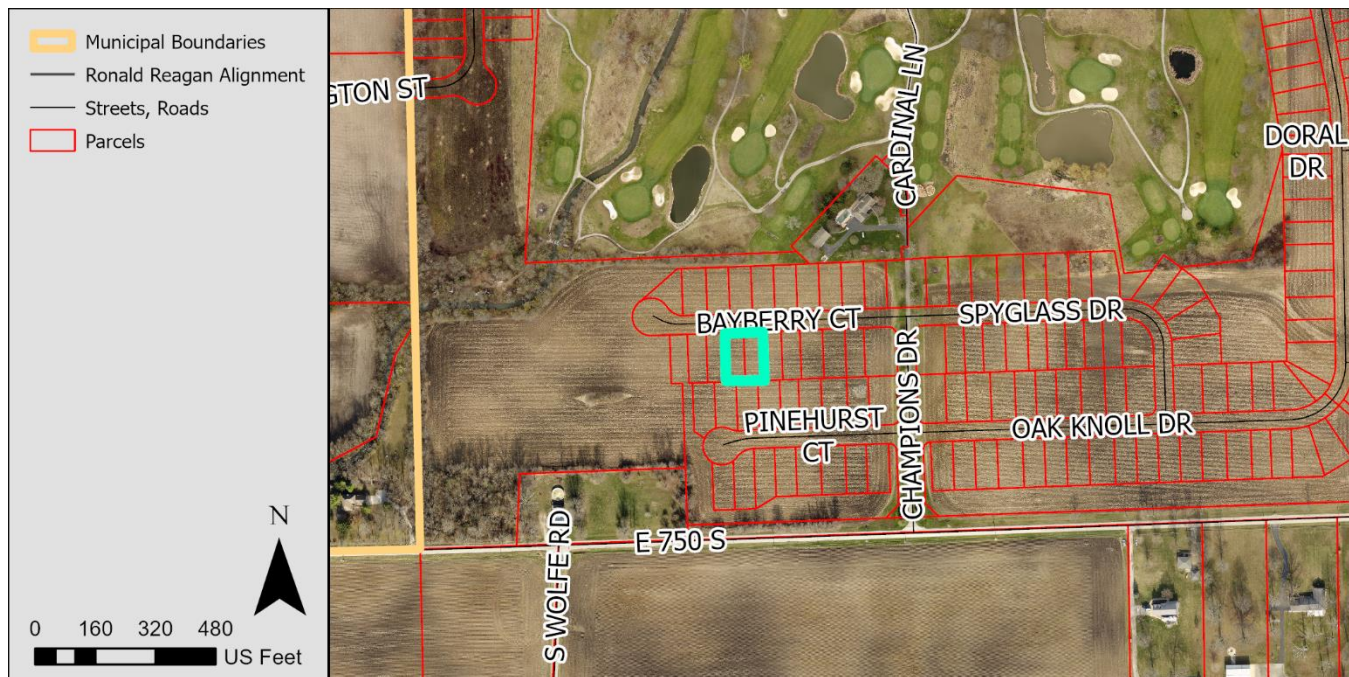
## Lennar Side Setbacks | Distance Between Dwellings

Meeting Date: August 3, 2023

**Docket BZA23-003-VA Lennar Side Setback and Distance Between Dwelling Units Variances.** The applicant is requesting two Variances (1) to reduce the side setbacks on an existing structure to reduce the side setbacks to 4.4' and 4.5' where the minimum required is 5', and (2) reduce the distance between dwelling units to 9.4' where the minimum required is 10'. The sites in question are located at 5169 and 5179 Bayberry Court in the Cardinal Pointe neighborhood in Whitestown. The applicant and owner is Lennar Homes of Indiana, Inc.

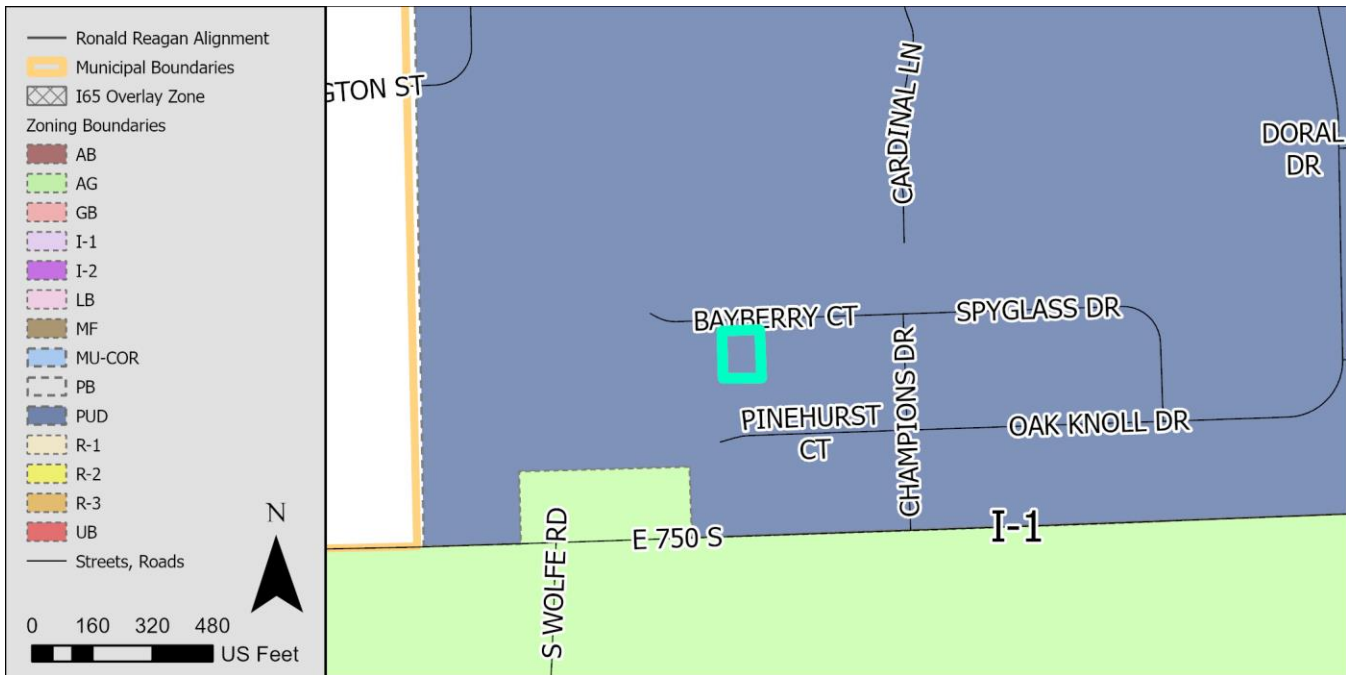
### Site Location

The site is located on the south side of Bayberry Court north of County Road 750 S. The Golf Club of Indiana golf course is located north of the site. The houses in question are under construction and there are other existing single-family homes surrounding the site.



### Zoning

The site in question is zoned Planned Unit development- Golf Club of Indiana and part of the Neighborhood Residential Sub-District. The Neighborhood Residential Sub-District “permits medium-density single-family and two-family residential uses and Golf Club uses. Development in this Sub-District including the area of the Golf Course typically ranges from 2 homes to 3 homes per acre.” The site is surrounded by other properties zoned under the same PUD designation.



## Golf Course of Indiana Planned Unit Development Ordinance

**Section 3.2 Bulk Standards** provides provisions for lot standards and height regulations. The PUD states the minimum side yard setback is 5 feet and the minimum distance between dwelling units is 10 feet.

### Section 3.2 Bulk Requirements:



- A. Maximum Height of Buildings (feet): 35
- B. Minimum Ground Floor Area – one story (sqft): 1,200
- C. Minimum Ground Floor Area – multi-story (sqft): 900
- D. Minimum Lot Width (feet) (measured at Building Line): 50
- E. Minimum Road Frontage (feet): 40
- F. Minimum Lot Area (sqft): 6,000 (3,000 for two-family uses on individually platted lots)
- G. Minimum Front Yard Setback (feet): 25
- H. Minimum Side Yard Setback (feet): 5**
- I. Minimum Rear Yard Setback for Primary Structure (feet): 20
- J. Minimum Rear Yard Setback for Accessory Structures (feet): 5
- K. Maximum Density (dwelling units/acre): 3 (applied to the aggregate of the Neighborhood Residential and Open Space / Golf Course Sub-Districts)
- L. Minimum Open Space: 30% (applied to the aggregate of the Neighborhood Residential and Open Space / Golf Course Sub-Districts)
- M. Maximum Lot Coverage: 60%
- N. Minimum Primary Structure Width (feet): 18
- O. Minimum Distance Between Dwelling Units (feet): 10**
- P. Whitestown Municipal Utilities for Water and Sewer Required: Yes

## Proposed Development

The applicant is requesting a Variance to reduce the minimum side setback from 5' to 4.4' and 4.5' for the property at 5169 Bayberry Court. The house is currently under construction. Due to the reduction in side yard setback, a reduction in distance between dwelling units is then required. The applicant is proposing to reduce the minimum distance between dwelling units at 5169 and 5179 Bayberry Court from 10' to 9.4'. The house on the other side of 5169 Bayberry Court meets the minimum required distance between dwelling units.

The submitted materials indicate the following:

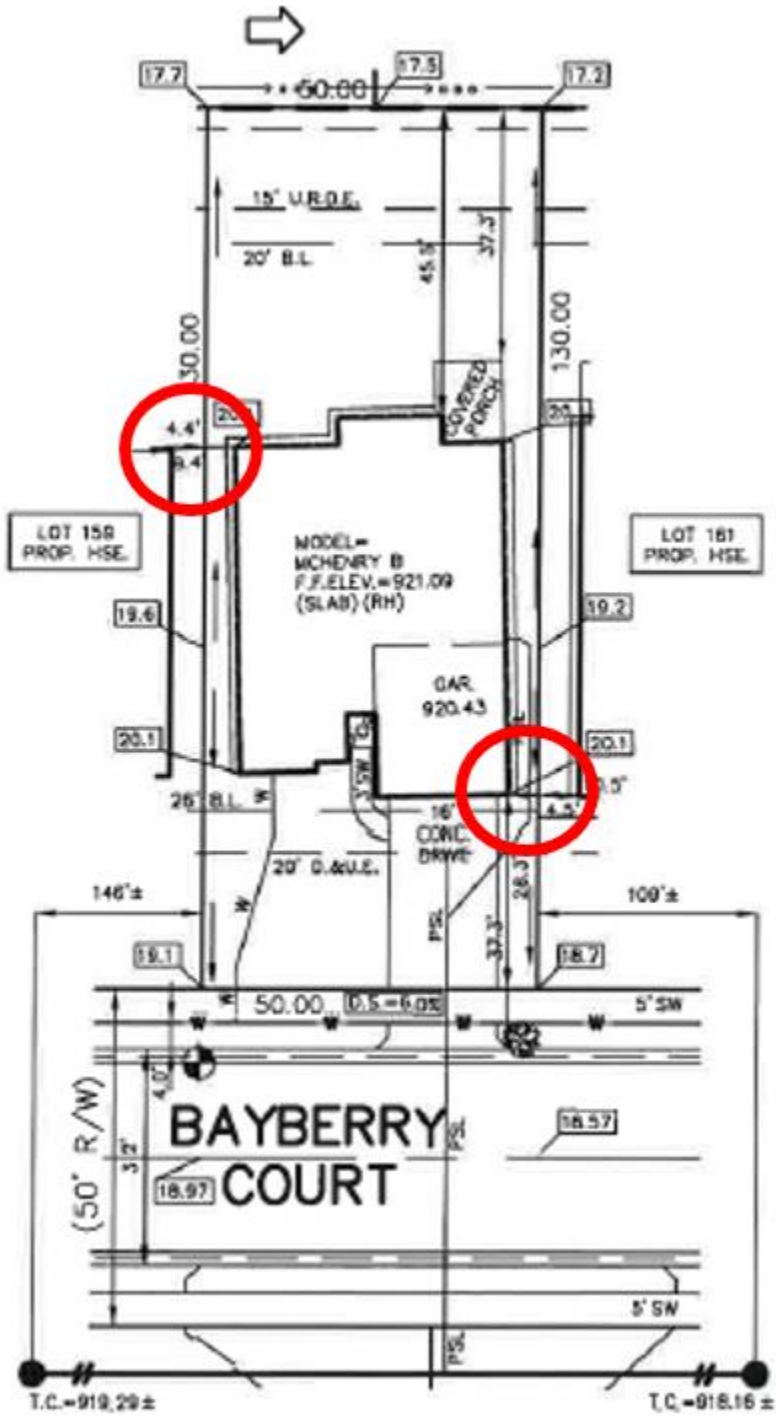
For the site at 5169 Bayberry Court requesting the side setback reduction and the resulting distance between dwelling unit reduction:

- The lot is approximately 6,500 square feet and 50 feet wide;
- The proposed structure is approximately 1,975 square feet; and,
- The proposed structure meets the front and rear setbacks.

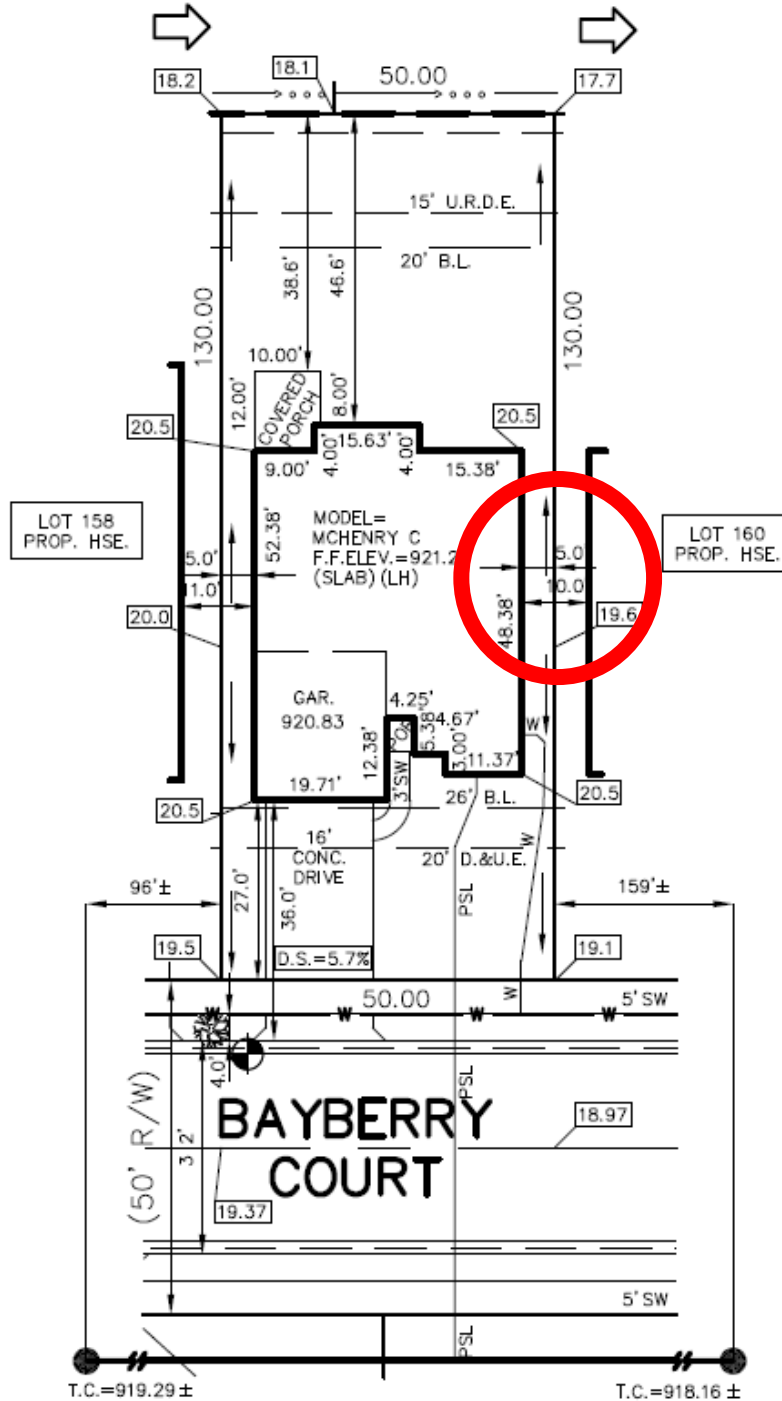
For the site at 5179 Bayberry Court affected by the reduced side setback and needing the distance between dwelling unit reduction:

- The lot is approximately 6,500 square feet and 50 feet wide;
- The proposed structure is approximately 1,957 square feet; and,
- The proposed structure meets the front, rear, and side setbacks.

Below is the plot plan of 5169 Bayberry Court. 5179 Bayberry Court is located adjacent to the left of the site when looking at the plot plan.



Below is the plot plan for 5179 Bayberry Court.



**Staff Recommendation**

Staff is providing an unfavorable recommendation for the 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 IC 36-7-4-918.5 and denial be based upon:

1. 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.**

2. 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.**

3. 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:

1. 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.
2. 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.

## Materials Submitted by the Applicant

### **Attachment D: Standards for Evaluating a Variance**

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Use the following form or attach a separate sheet(s) to explain the Variance request. The BZA's decision shall be based upon how each of the following statutory requirements is justified in the request.

#### ***Petition Information***

Describe the proposed use of the property (type of use, hours of operation, access, necessary construction, employees, etc.):

The proposed use of the properties is single-family residential as approved in the PUD.

#### ***Standards for Evaluation***

1. The variance will not be injurious to the public health, safety, morals, and general welfare of the community because...

The homes are currently under construction, and adjacent to other homes that are currently under construction. The homes have been constructed in accordance with the required building codes, and future modifications may be needed so that the reduced setbacks will not be injurious to the public health, safety, morals, and general welfare of the community.

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

As described above, the homes are being built in accordance with all the required building codes for safety and the use will remain a single-family home. The reduced setbacks will not affect the use or value of the adjacent area in an adverse manner.

3. The strict application of the terms of the Ordinance will continue the unusual and unnecessary hardship as applied to the property for which the variance is sought because...

The home located at 5169 Bayberry Court would have to be torn down and rebuilt to comply with the PUD Ordinance. Since the home is built at a slight angle, portions of the home exceed the 5' required which would mean that the average setback complies with the 5' even though the home is 4'4" from the closest property line. Reducing the building separation will not cause a negative impact to between the two (2) homes.



# STOEPPELWERTH

ALWAYS ON

7965 East 106th Street, Fishers, IN 46038-2505  
phone: 317.849.5935 fax: 317.849.5942

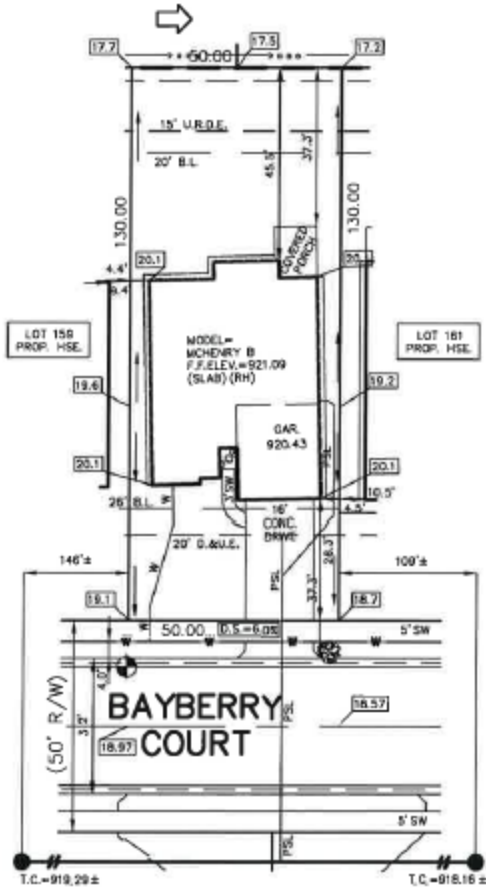
JOB ID CARDPT2.160

CONTROL# 105188 LEN

5169 BAYBERRY COURT  
WHITESTOWN, IN 46075

(PIN)

**NOTE: THIS PROPOSED HOUSE HAS LITTLE TO NO TOLERANCE RELATED TO SETBACK REQUIREMENTS. THE POURED FOUNDATION MUST BE PINNED BY STOEPPELWERTH & ASSOCIATES (S&A) PRIOR TO INSTALLATION AND/OR CONSTRUCTION OF ANY CONCRETE OR FRAMED WALLS IN ORDER TO ASSURE ITS PROPER LOCATION. S&A WILL ASSUME NO LIABILITY SHOULD THE BUILDER FAIL TO SCHEDULE SUCH A PINNING WITHIN OUR STANDARD AND AGREED UPON LEAD TIMES.**



1" = 30'

LOT AREA: 6,500 Sq. Ft.

OPEN SPACE=59.3%

LOT COVERAGE=33.6%

M.F.P.G.=918.7

- LEGEND:
- XX.X PROPOSED GRADE PER PLAN
  - XX.XAB AS BUILT GRADE
  - S.S.D. --- SUB-SURFACE DRAIN
  - S.S. --- SANITARY SEWER
  - AB --- 8" AS BUILT SANITARY LATERAL
  - PSL --- 8" PROPOSED SANITARY LATERAL
  - --- STORM SEWER
  - W --- 3/4" WATER CONNECTION
  - --- WATER MAIN
  - --- SWALE
  - 16" MULCH BED
  - SANITARY MANHOLE
  - STORM MANHOLE
  - CURB INLET
  - FIRE HYDRANT
  - EMERGENCY FLOOD ROUTE
  - STREET TREE
  - U.R.D.E. URBANIZED REGULATED DRAINAGE EASEMENT
  - D.A.U.E. DRAINAGE & UTILITY EASEMENT
  - B.L. BUILDING LINE
  - M.L.A.G. MINIMUM FLOOD PROTECTION GRADE

CONTRACTOR SHALL CUT 9.5' OFF OF LATERAL AND BEGIN FROM THAT POINT AND CONNECT TO HOUSE FOLLOWING PLOT PLAN.



*David J. Stoepfelwerth*

NOTE: THIS DRAWING IS FOR PERMITTING PURPOSES ONLY AND NOT INTENDED TO BE REPRESENTED AS A RECONSTRUCTION SURVEY. ORIGINAL SURVEY, ROUTE SURVEY, LOT SURVEY OR A SURVEYOR LOCATION REPORT OR ANY OTHER TYPE OF PROPERTY BOUNDARY ASSIGNMENT, NO BOUNDARY CORNERS HAVE BEEN SET AND THEREFORE NO LIABILITY WILL BE ASSUMED FOR ANY USE OF THIS DATA FOR CONSTRUCTION OF NEW IMPROVEMENTS INCLUDING FENCES.

## LOT 160 CARDINAL POINT SECTION 2

INST. #2022007237  
P.B. 33, PG 22-27  
C.O.C. #2022008993  
ZONING: PUD

- 5' MINIMUM SIDE YARD
- 25' MINIMUM FRONT YARD
- 20' MINIMUM REAR YARD (PRIMARY)
- 5' MINIMUM REAR YARD (ACCESSORY)
- 10' MINIMUM BETWEEN STRUCTURE
- 60% MAX LOT COVERAGE
- 30% MINIMUM OPEN SPACE

BENCHMARK  
TOP OF CURB = 918.97

ALL UNDERGROUND SEWERS AND UTILITIES SHOWN ARE PLOTTED BY SCALE FROM DESIGN PLANS FURNISHED BY ENGINEER. THE ACTUAL FIELD LOCATION MAY VARY.

|                 |       |     |     |
|-----------------|-------|-----|-----|
| SOD:            | 426 ± | Sq. | Yd. |
| SEED:           | N/A ± | Sq. | Ft. |
| CONC. DRIVEWAY: | 450 ± | Sq. | Ft. |
| PRIVATE WALK:   | 42 ±  | Sq. | Ft. |
| PUBLIC WALK:    | 170 ± | Sq. | Ft. |
| APRON:          | 148 ± | Sq. | Ft. |
| ADDITIONAL SOD: | N/A ± | Sq. | Yd. |
| HANDICAP RAMPS: | 0     |     |     |

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
SIGNATURE REPRESENTS CONFIRMATION OF RECEIPT OF PLOT PLAN BY CUSTOMER

- 2ND REV MOVE HOUSE TO AB POSITION
- 01/10/23 HRC
- 1ST REV. ADD MULCH BED
- 11/16/22 BJH
- 10/10/22 JRS

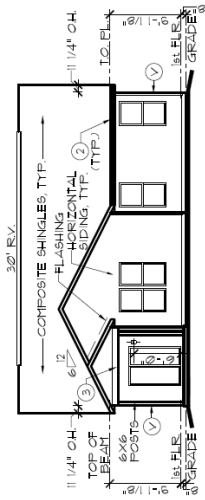




Exhibit E- Photos

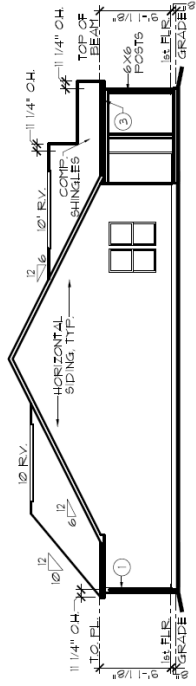


| SELECTED OPTIONS |                         |
|------------------|-------------------------|
| X                | Elevation B             |
| X                | 3-Car Front-Load Garage |
| X                | Brick Waincot Wrap      |



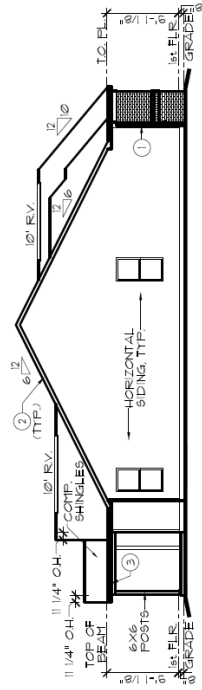
### REAR ELEVATION

SCALE: 1/16" = 1'-0"



### RIGHT ELEVATION

SCALE: 1/16" = 1'-0"



### LEFT ELEVATION

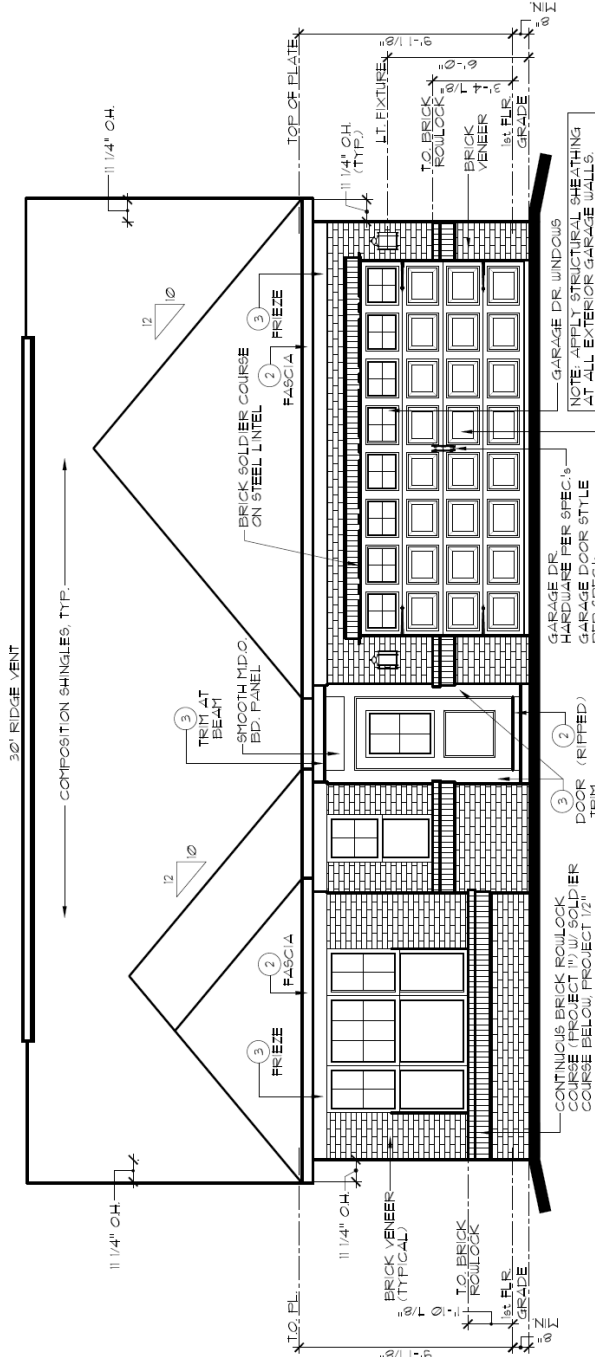
SCALE: 1/16" = 1'-0"

| EXTERIOR TRIM KEY |            |
|-------------------|------------|
| (V) VINYL CORNER  | (3) 1 x 8  |
| (1) 1 x 4         | (4) 1 x 10 |
| (2) 1 x 6         | (5) 1 x 12 |

**NOTE:**  
SIDES AND REAR WINDOW GRIDS WHEN REQUIRED BY CERTAINITY, SHALL TRUGH IN USE OFFRONT ELEVATION.

**NOTE:**  
STEEL LINTELS AND MASONRY CONSTRUCTION ABOVE GARAGE DOORS SHALL COMPLY WITH THE 2020 INDIANA RESIDENTIAL CODE SECTION R 10233.

NOTE: EXTERIOR TRIM NOTATIONS INDICATE TRIM PIECE SIZE ONLY. ACTUAL TRIM MATERIAL / FINISH PER DIVISION SPECIFICATIONS.



### FRONT ELEVATION B

SCALE: 3/16" = 1'-0"