

## Agenda Item #2

<b>Case Number</b>	BZNA-0047-2019 BZNA-0048-2019 BZNA-0057-2019 BZNA-0058-2019	<b>Acreage</b>	6.76
<b>Address</b>	222 Harbourtown Ct.	<b>Zoning</b>	R-5
<b>Owner</b>	Waterfront 222, LLC	<b>Reviewer</b>	David Hirschle, AICP
<b>Applicant</b>	Waterfront 222, LLC	<b>BZA Meeting</b>	May 6, 2019

**Requested Action:**

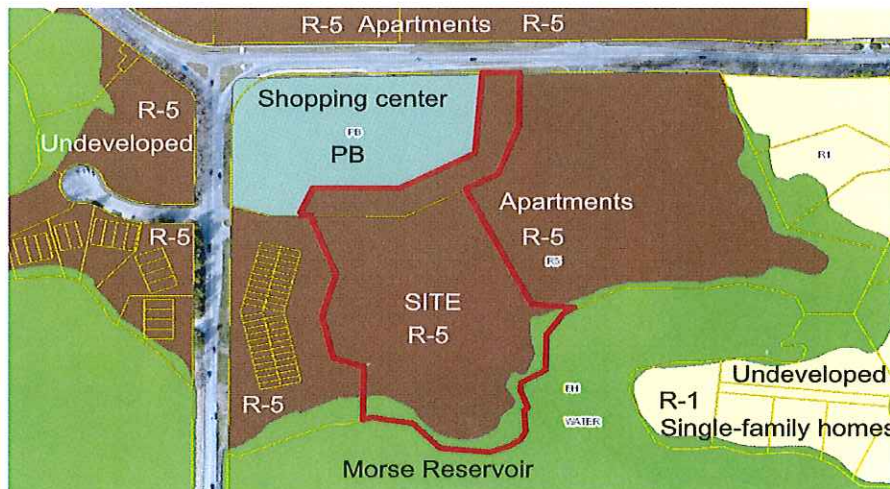
BZNA-0047-2019: UDO § 8.B.6.E (Table 8.B) – Variance of Development Standards to allow an increase in maximum building height;  
 BZNA-0048-2019: UDO § 8.B.6.E (Table 8.B) – Variance of Development Standards to allow a decrease in the minimum lot area per dwelling unit;  
 BZNA-0057-2019: UDO § 8.B.6.E (Table 8.B) – Variance of Development Standards to allow a decrease in the minimum lot width;  
 BZNA-0058-2019: UDO § 8.B.6.E (Table 8.B) – Variance of Development Standards to allow a decrease in the minimum rear setback.

**Recommendation: Mixed (approval and denial), depending on variance request.**

See Findings of Facts and Requested Conditions on page 5.

**Table of Contents:**

1. Staff Report
2. Parcel Map
3. Aerial Photo
4. Application
5. Easement Agreement
6. Site and neighborhood pictures



## LOCATION

The site is located just southeast of the intersection of Little Chicago Road and East 211<sup>th</sup> Street. The site is accessed by Harbour Town Drive off of Little Chicago Road, and is part of the property originally approved for construction of the Harbour Town Apartments complex. The acreage involved is interior to the original Harbour Town approval; in other words, the site's boundaries do not have the minimum required frontage on a public road, a problem remedied by approval of the 2018 variance shown in "History," below.

## HISTORY

The site was occupied from the 1970s until around 2006 by 8 of the 20 apartment buildings of Harbour Town Apartments. Around 2006, the property owner planned to redevelop the entirety of the Harbour Town Apartments property into Harbour Town Condominiums by demolishing all 20 buildings (204 apartment units) and constructing six new buildings housing 345 units. As part of these plans, the owner approached the BZA in 2006 for five variances, three of which were approved (two of the five were withdrawn):

- One approved variance resulted in a reduction of required front yard setbacks along Little Chicago Road and then-named Carrigan Road, now East 211<sup>th</sup> Street. As part of the approvals, the Board imposed a condition that the petitioner commit to dedicate half rights-of-way of 40 feet and 30 feet along Little Chicago Road and Carrigan Road, respectively, if the City requests those half rights-of-way in the future. These commitments have been recorded and run with the land.
- A second variance approved an increase in maximum building height from 45 feet to 65 feet, allowing for first-floor parking with living units above. Importantly, the petitioner sought this variance for only the interior buildings, meaning that the existing Villas at Morse Lake building was built to meet the maximum 45-foot height for the R-5 district.
- A third variance approved a reduction in required lot size per dwelling unit from 3000 square feet to 2400 square feet.

The 2008 financial crisis apparently put an end to the plans, but not before one of the six condominium buildings was built (the existing Villas at Morse Lake) and several acres to the east were cleared of apartment buildings.

In 2018, the current property owner gained a variance from the BZA to allow a reduction in the requirement that a developing property in the R-5 district have a minimum of 150 feet of property line fronting on a public road. This variance was granted and the subject site proposes access from Little Chicago Road through an easement agreement between the owners of the subject site and Condominium Owner's Association of the Villas on Morse Lake, Inc. That easement agreement has been attached as Exhibit 5.

## PROPOSAL

The petitioner proposes to develop the 6.76 acres in question as a mixed residential community consisting of attached single-family cottages, waterfront townhomes, and multi-family buildings. The R-5 zoning district calls for the predominant housing types to be townhouses and garden apartments. The petitioner's building choices and designs are flexible at this point, but the Project Narrative refers to "anticipated two multi-family or condominium buildings," "13 attached single-family cottages," and

"8 waterfront townhomes." Included in the development is a proposed 72-unit multi-family building on the east side of the site. The application included several different illustrations of multi-family housing styles that are being considered for construction on the property. These illustrations are included herein.

Four variances are sought for the project:

- 1) **An increase in maximum building height.** As the project has been explained, the buildings proposed to exceed the 45-foot height limit would be located on one or more of Blocks 6, 7, and 8, with a proposed maximum height of 65 feet.
- 2) **A decrease in the minimum lot area per dwelling unit.** The UDO requires an equivalent of 3000 square feet of property for each dwelling unit proposed. The Variance application seeks a reduction in the minimum square footage of property per dwelling unit from 3000 to 2400.
- 3) **A decrease in the minimum lot width.** The UDO requires a minimum lot width of 150 feet as measured at the building setback line. Blocks 1, 2, 3, and 6 propose platted lot (or Block) widths below this figure.
- 4) **A decrease in the minimum rear setback.** The required rear setback for primary structures in the R-5 district is 20 feet. Blocks 1 and 2 show rear yard setbacks of 15 feet. (Blocks 3, 4, 5, and 8 also show 15-foot setbacks, but these lots do not have rear yards, as defined by ordinance. They have only front and side yards.)

## ANALYSIS

Since 1996, the size of an average newly-constructed home in the United States rose from 2,200 square feet to today's average of 2,700 square feet. In Noblesville, the figures are 3,200 square feet for an average home in 1996 to 4,200 square feet today. During the same time period, average U.S. household size dropped from 2.65 persons per dwelling unit to 2.54 persons per unit. The Housing Analysis completed for the City of Noblesville in 2016 by Greenstreet, Ltd. recommends less detached single-family residential construction and more attached single-family construction to accommodate increasingly common households such as single-parent, empty nesters, and singles waiting longer to marry. It recommends a mix of product types within a single development to satisfy multiple market segments. Of the 27,000 housing units in Noblesville, 77% are single-family detached, 17% are multi-family, and 6% are single-family attached. According to City staff, the condominiums proposed in the development for which the variances are being considered by the BZA on May 6 are the first to be proposed in Noblesville since 2006. The Noblesville Comprehensive Plan recommends "Higher-Density Residential" for the subject property and calls for the City to "provide diverse housing options."

For Variance 1, the increase in building height is proposed to allow for the provision of parking on the first floor of buildings, under the residential units. Siting parking within the building footprint alleviates the need to provide paved surfaces elsewhere on the property, which has the effect of allowing for more greenspace throughout the site. The Variance application itself does not specify the Blocks for which this variance is sought. This is important, because granting a blanket height variance for the entire site could possibly have a much greater impact than an increased height for a single building. Staff can support this variance based on the recommendations of the Housing Study and site limitations for

establishing surface parking; however, recommendation for approval is given only if the height variance applies to Block 8 only or Block 7 only, but not for more than one of these two Blocks.

For Variance 2, the figure of 6.76 acres for the subject property, given by the City's GIS system, results in 2726.5 square feet of property area for each of the proposed 108 dwelling units. However, the petitioner seeks approval for the lowering of the square footage per dwelling unit to 2400, not 2726.5. The UDO directs the BZA to ensure that "the requested variance is the minimum measure of relief necessary to alleviate the alleged hardship . . ." Staff cannot support this Variance request in its current form, but would support a Variance seeking a reduction of the 3000-square-foot minimum to 2726 square feet of property area per dwelling unit.

For Variance 3, the UDO figure of a minimum of 150 feet of lot width most likely envisioned multi-family buildings on platted lots. However, with row townhomes and similar attached single-family residences, the 150-foot minimum becomes less convincing and somewhat arbitrary. The platted Blocks 1, 2, 3, and 6 are proposed to have widths below 150 feet, but only because there are to be fewer attached units in these Blocks, resulting in a lower linear distance of building face. Staff can support this Variance request, as street infrastructure installed by the previous developer dictates areas for buildings and puts some constraints on site design and block length.

For Variance 4, the petitioner's application does not provide adequate reasoning for requesting a rear setback reduction. There is, for example, no indication of the depth of the buildings proposed for Blocks 1 and 2, the only Blocks to which this Variance applies. There is also no indication of whether the requested setback reduction is in anticipation of construction by the individual dwelling unit owners of an amenity like a roofed rear deck, for example. Without some indication of need, Staff cannot support this request.

## VARIANCE OF DEVELOPMENT STANDARDS FINDINGS

### AGENDA ITEM #2:

The Noblesville Board of Zoning Appeals is authorized to approve or deny variances of development standards from the terms of the zoning ordinance. **The BZA may impose reasonable conditions as part of its approval. A variance of development standards may be approved only upon a determination in writing that the following three (3) conditions have been met (see Indiana Code § 36-7-4-918.5):**

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community:
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:
3. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought:

## RECOMMENDATION

### AGENDA ITEM #2:

**DENY Variance 4**

**APPROVE Variance 1, Variance 2, and Variance 3 based upon the following findings of fact:**

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

There would not appear to be any quantifiable or concrete adverse effects to the public health, safety, or morals. "General welfare" of the community is more vague than the previous three terms, and public remonstrance may bring to light issues for consideration, but staff does not see with certainty the harming of the public's general welfare.

- **The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and**

Use of surrounding property would not seem to be adversely affected by Variance approval of one or all Variances sought, as the property has been used for multi-family residential purposes for decades in the past. Regarding property value of surrounding uses, staff has heard from parties interested in this case, and can record claims from different parties that there will be an increase or a decrease in property value, depending on the person speaking. Absent a study to ascertain effect, staff cannot conclude a definite adverse effect on property value.

- **The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.**

The applicant has taken control of a site on which there exists completed streets. The location of these streets dictates, to some extent, the layout of the site. As providing surface parking would decrease the amount of open space proposed for residents, solving this problem by providing the majority of parking within the building footprint avoids this lack-of-greenspace hardship imposed upon residents.

**With the following specific conditions:**

1. The requested height variance is to apply only to Block [either 7 or 8] on the "Preliminary Plans for Harbourwalk," Sheet C3.0, dated March 29, 2019, with the height measuring point following the definition of "Height, Building" in Article 2, Section 2 of the Unified Development Ordinance.
2. The decrease in minimum lot area per dwelling unit is to a figure of two thousand seven hundred twenty-six (2726) square feet.
3. The petitioner is to provide a map of the existing trees on-site and indicate which trees with a caliper of six (6) inches or greater at a Diameter Breast Height of four (4) feet are to be retained.
4. The Applicant is to sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
5. Any alterations to the site's approved land uses or site plan, other than those required by the Board of Zoning Appeals, shall be submitted to the Planning and Development Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

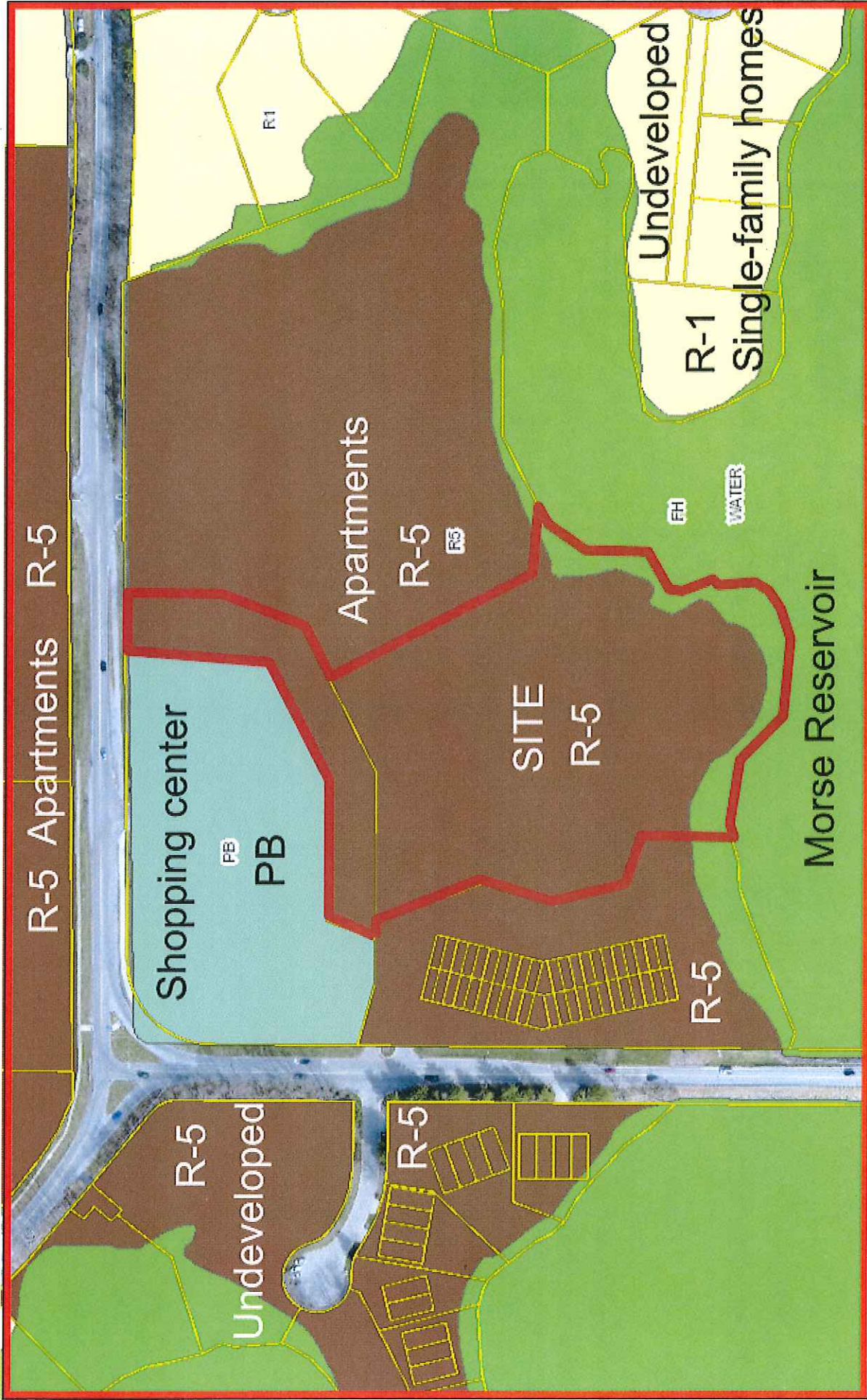


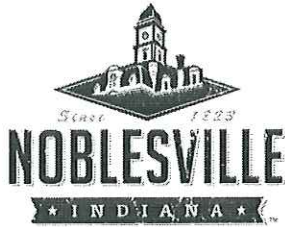
Exhibit 2



Exhibit 3

EXHIBIT 4

#1  
RECEIVED  
APR 01 2019  
Noblesville  
Planning Department



CITY OF NOBLESVILLE  
BOARD OF ZONING APPEALS  
VARIANCE OF DEVELOPMENT STANDARD APPLICATION

Application Number: BZNA-0047-2019

The undersigned requests a Variance of Development Standards as specified below. Should this variance request be approved, such approval shall only authorize the particular use described in this application and as further limited by reasonable conditions imposed upon such approval by the Board of Zoning Appeals.

Project Name or Occupant Name \_HARBOURTOWN / Address 222 WATERFRONT CT

**Applicant Name:** WATERFRONT 222 LLC  
**Applicant Address:** 222 WATERFRONT CT,  
**Applicant City/State/Zip:** NOBLESVILLE, IN 46062 **E-mail:** 222WATERFRONT@GMAIL.COM  
**Applicant Phone #1:** 317.675.7770 **Phone #2:** \_\_\_\_\_ **Fax:** \_\_\_\_\_  
**Owner Name:** WATERFRONT 222 LLC  
**Owner Address:** 222 WATERFRONT CT  
**Owner City/State/Zip:** NOBLESVILLE IN 46062 **E-mail:** 222WATERFRONT@GMAIL.COM  
**Owner Phone #1:** 317.675.7770 **Phone #2:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

Property Location: , see legal description attached.

**Existing Land Use:** R5 MULTIFAMILY, VACANT EXCEPT CLUBHOUSE AND POOL  
**Common Description of Request:** Increase of Building Height from 45' to 65'  
**Zoning District of Property:** R5 **Code Section(s) Appealed:** UDO § 8.B.6.E (Table 8.B)

Date: 3/29/2019 Applicant's Signature:



The Noblesville Board of Zoning Appeals (BZA) is authorized to approve or deny Variances of Development Standard from the terms of the Unified Development Ordinance. The BZA may impose reasonable conditions as part of its approval. A Variance of Development Standard may be approved only upon a determination in writing that the following three (3) statements are true (see Indiana Code § 36-7-4-918.5):

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. Explain why this statement is true in this case:

The approval of the requested Variances will not be injurious to public health, safety, or the general welfare of the community. These variances are necessary in order to permit the redevelopment of the Harbourtown apartments previously located on the identified parcels which we are in the process of Platting at this time. The variances would allow us to develop this infill site into a hi-end community with with an extraordinary list of amenities

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2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner by the approval of this variance request. Explain why this statement is true in this case:

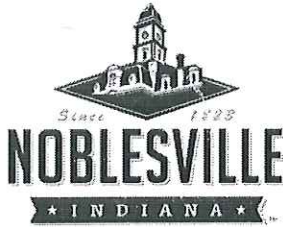
The proposed redevelopment of the vacant Harbourtown Apartment project into a Hi-end Attached residential community will not affect the use and value of adjacent properties in an adverse manner. This proposal will likely exceed the architectural quality of the other developments in the vicinity. The proposed residences provide choices for residents not currently available in the NW portion of noblesville. Their may be some Condominiums built on the site not that dissimilar to the Villas on Morese to our immediate West. We believe our community will appeal to several different buyers.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property. Explain why this statement is true in this case: The strict application of the terms of the Zoning will create practical difficulties and create a challenging environment in which to redevelop the subject property. It proves to be necessary to massage some of the traditional R% standards in order to provide the flexibility needed to redevelop this property in the creative manner which we are attempting to do.

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CITY OF NOBLESVILLE  
BOARD OF ZONING APPEALS  
VARIANCE OF DEVELOPMENT STANDARD APPLICATION

#2  
RECEIVED  
APR 01 2019  
Noblesville  
Planning Department

Application Number: BZNA-0048-2019

The undersigned requests a Variance of Development Standards as specified below. Should this variance request be approved, such approval shall only authorize the particular use described in this application and as further limited by reasonable conditions imposed upon such approval by the Board of Zoning Appeals.

Project Name or Occupant Name \_HARBOURTOWN / Address 222 WATERFRONT CT

**Applicant Name:** WATERFRONT 222 LLC  
**Applicant Address:** 222 WATERFRONT CT ,  
**Applicant City/State/Zip:** NOBLESVILLE, IN 46062 **E-mail:** 222WATERFRONT@GMAIL.COM  
**Applicant Phone #1:** 317.675.7770 **Phone #2:** \_\_\_\_\_ **Fax:** \_\_\_\_\_  
**Owner Name:** WATERFRONT 222 LLC  
**Owner Address:** 222 WATERFRONT CT  
**Owner City/State/Zip:** NOBLESVILLE IN 46062 **E-mail:** 222WATERFRONT@GMAIL.COM  
**Owner Phone #1:** 317.675.7770 **Phone #2:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

Property Location , see legal description attached.

**Existing Land Use:** R5 MULTIFAMILY, VACANT EXCEPT CLUBHOUSE AND POOL  
**Common Description of Request:**; Decrease in lot area per dwelling unit from 3000 sf to 2400 sf  
**Zoning District of Property:** R5 **Code Section(s) Appealed:** UDO § 8.B.6.E (Table 8.B)

Date: 3/29/2019

Applicant's Signature: \_\_\_\_\_

The Noblesville Board of Zoning Appeals (BZA) is authorized to approve or deny Variances of Development Standard from the terms of the Unified Development Ordinance. The BZA may impose reasonable conditions as part of its approval. A Variance of Development Standard may be approved only upon a determination in writing that the following three (3) statements are true (see Indiana Code § 36-7-4-918.5):

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. Explain why this statement is true in this case:

The approval of the requested Variances will not be injurious to public health, safety, or the general welfare of the community. These variances are necessary in order to permit the redevelopment of the Harbortown apartments previously located on the identified parcels which we are in the process of Platting at this time. The variances would allow us to develop this infill site into a hi-end community with with an extraordinary list of amenities

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2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner by the approval of this variance request. Explain why this statement is true in this case:

The proposed redevelopment of the vacant Harbortown Apartment project into a Hi-end Attached residential community will not affect the use and value of adjacent properties in an adverse manner. This proposal will likely exceed the architectural quality of the other developments in the vicinity. The proposed residences provide choices for residents not currently available in the NW portion of noblesville. Their may be some Condominiums built on the site not that dissimilar to the Villas on Morese to our immediate West. We believe our community will appeal to several different buyers.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property. Explain why this statement is true in this case: The strict application of the terms of the Zoning will create practical difficulties and create a challenging environment in which to redevelop the subject property. It proves to be necessary to massage some of the traditional R% standards in order to provide the flexibility needed to redevelop this property in the creative manner which we are attempting to do.

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CITY OF NOBLESVILLE
BOARD OF ZONING APPEALS
VARIANCE OF DEVELOPMENT STANDARD APPLICATION

Application Number: BZNA-0057-2019

The undersigned requests a Variance of Development Standards as specified below. Should this variance request be approved, such approval shall only authorize the particular use described in this application and as further limited by reasonable conditions imposed upon such approval by the Board of Zoning Appeals.

Project Name or Occupant Name: HARBOUR WALK / 222 WATERFRONT CT
Common Address

Applicant Name: WATERFRONT 222 LLC

Applicant Address: 222 WATERFRONT CT

Applicant City/State/Zip: NOBLESVILLE IN 46062 E-mail: 222WATERFRONT@gmail.com

Applicant Phone #1: 317 675 7770 Phone #2: Fax:

Owner Name: WATERFRONT 222 LLC

Owner Address: 222 WATERFRONT CT

Owner City/State/Zip: NOBLESVILLE IN 46062 E-mail: 222WATERFRONT@gmail.com

Owner Phone #1: 317 675 7770 Phone #2: Fax:

Property Location: X Not located in a recorded subdivision, see legal description attached.

Subdivision Name:

Subdivision Section: Lot Number: Last Deed of Record Number

Existing Land Use: R5 MULTIFAMILY VACANT EXCEPT CLUBHOUSE & POOL

Common Description of Request: MINIMUM LOT WIDTH REDUCTION FROM 150' TO 90'

Zoning District of Property: R5 Code Section(s) Appealed: UDO § 8.B.6.E (TABLE 8.B)

Date: 4/9/19 Applicant's Signature: [Handwritten Signature]

The Noblesville Board of Zoning Appeals (BZA) is authorized to approve or deny Variances of Development Standard from the terms of the Unified Development Ordinance. The BZA may impose reasonable conditions as part of its approval. A Variance of Development Standard may be approved only upon a determination in writing that the following three (3) statements are true (see Indiana Code § 36-7-4-918.5):

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. Explain why this statement is true in this case:

The approval of the requested Variances will not be injurious to public health, safety, or the general welfare of the community. These variances are necessary in order to permit the redevelopment of the Harbourtown apartments previously located on the identified parcels which we are in the process of Platting at this time. The variances would allow us to develop this infill site into a hi-end community with with an extraordinary list of amenities

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2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner by the approval of this variance request. Explain why this statement is true in this case:

The proposed redevelopment of the vacant Harbourtown Apartment project into a Hi-end Attached residential community will not affect the use and value of adjacent properties in an adverse manner. This proposal will likely exceed the architectural quality of the other developments in the vicinity. The proposed residences provide choices for residents not currently available in the NW portion of noblesville. They may be some Condominiums built on the site not that dissimilar to the Villas on Morese to our immediate West. We believe our community will appeal to several different buyers.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property. Explain why this statement is true in this case: The strict application of the terms of the Zoning will create practical difficulties and create a challenging environment in which to redevelop the subject property. It proves to be necessary to massage some of the traditional R% standards in order to provide the flexibility needed to redevelop this property in the creative manner which we are attempting to do.

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CITY OF NOBLESVILLE  
BOARD OF ZONING APPEALS  
VARIANCE OF DEVELOPMENT STANDARD APPLICATION

Application Number: BZNA-0058-2019

The undersigned requests a Variance of Development Standards as specified below. Should this variance request be approved, such approval shall only authorize the particular use described in this application and as further limited by reasonable conditions imposed upon such approval by the Board of Zoning Appeals.

Project Name or Occupant Name: HARBOR WALK / 222 WATERFRONT CT  
Common Address \_\_\_\_\_

Applicant Name: WATERFRONT 222 LLC

Applicant Address: 222 WATERFRONT CT

Applicant City/State/Zip: NOBLESVILLE IN 46062 E-mail: 222WATERFRONT@gmail.com

Applicant Phone #1: 3176757770 Phone #2: \_\_\_\_\_ Fax: \_\_\_\_\_

Owner Name: WATERFRONT 222 LLC

Owner Address: 222 WATERFRONT CT

Owner City/State/Zip: NOBLESVILLE IN 46062 E-mail: 222WATERFRONT@gmail.com

Owner Phone #1: 3176757770 Phone #2: \_\_\_\_\_ Fax: \_\_\_\_\_

Property Location:  Not located in a recorded subdivision, see legal description attached.

Subdivision Name: \_\_\_\_\_

Subdivision Section: \_\_\_\_\_ Lot Number: \_\_\_\_\_ Last Deed of Record Number \_\_\_\_\_

Existing Land Use: R5 MULTIFAMILY VACANT EXCEPT CLUBHOUSE & POOL

Common Description of Request: Reduction of REAR YARD SETBACK FROM 20' TO 15'

Zoning District of Property: R5 Code Section(s) Appealed: UDO § 8.B.6.E (TABLE 8.B)

Date: 4/9/19

Applicant's Signature:

The Noblesville Board of Zoning Appeals (BZA) is authorized to approve or deny Variances of Development Standard from the terms of the Unified Development Ordinance. The BZA may impose reasonable conditions as part of its approval. A Variance of Development Standard may be approved only upon a determination in writing that the following three (3) statements are true (see Indiana Code § 36-7-4-918.5):

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. Explain why this statement is true in this case:

The approval of the requested Variances will not be injurious to public health, safety, or the general welfare of the community. These variances are necessary in order to permit the redevelopment of the Harbortown apartments previously located on the identified parcels which we are in the process of Platting at this time. The variances would allow us to develop this infill site into a hi-end community with with an extraordinary list of amenities

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2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner by the approval of this variance request. Explain why this statement is true in this case:

The proposed redevelopment of the vacant Harbortown Apartment project into a Hi-end Attached residential community will not affect the use and value of adjacent properties in an adverse manner. This proposal will likely exceed the architectural quality of the other developments in the vicinity. The proposed residences provide choices for residents not currently available in the NW portion of noblesville. Their may be some Condominiums built on the site not that dissimilar to the Villas on Morese to our immediate West. We believe our community will appeal to several different buyers.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property. Explain why this statement is true in this case: The strict application of the terms of the Zoning will create practical difficulties and create a challenging environment in which to redevelop the subject property. It proves to be necessary to massage some of the traditional R% standards in order to provide the flexibility needed to redevelop this property in the creative manner which we are attempting to do.

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## HARBOURWALK Project Narrative

The history of the land that we are developing goes back into the 1970's. It was then that the Harbourtown Apartment complex was constructed and survived in its entirety until roughly 2006 at which time Harbourtown Ventures II decided that it would pursue the redevelopment of the site into a High-end condominium complex. The history shows that only one of the six buildings were constructed as planned as the housing market was deeply affected by the "Financial crisis". At a later date, even as units struggled to sell the "Retained parcel" was cleared and the existing units on our site were razed. Our site has existed in that condition for 10 years now. We hope to bring the site forward from its dormant state into a beautiful mixed product multifamily community.

During the course of planning for the site the Developer realized it was a challenging site to redevelop as the UDO was written. At that juncture, multiple variances were requested, and several were approved. Of the variances that were approved and recorded, we found that two of them would be vital to provide the ability to create a unique site that we believe would provide the highest and best use for the site. The first variance we are requesting is to provide a 65' building height from the current maximum of 45' within the R5 district. This would allow Multifamily residences to be built on a pedestal parking garage. By placing a significant amount of parking within the building footprint, we could conserve the amount of impervious areas that we are creating on the site, and better use those areas for amenity and pocket park areas. We don't believe we would actually reach 65 feet, but should we build a 4.5 story structure potentially with a rooftop amenity area, we would like to have a flexible number in place prior to designing the buildings. As a note, there was a variance approved in 2006 that was applied to our land to allow for a 65' building. Please reference the attached action of Variance to confirm the height allowance granted.

The second Variance that was approved and recorded on our site was a reduction in the required lot area per unit from 3000 square feet to 2400 square feet. In essence this allow the R5 zoning to provide for roughly 18 units per acre from the R5 UDO allowance of 14 per acre. The advantage of this additional density would be most evident through the verticality of the anticipated 2 multifamily or condominium buildings. It would not affect the horizontal density on the site, and conserve on additional impervious surfaces. Again, this would allow the highest and best use for our site. The additional verticality of the buildings should not create any burden on our neighbors. In addition to the multifamily buildings, we have 13 attached single-family cottages planned. This product is new to the Indianapolis market and provides a unique housing option in our community. We also have a minimum of 8 Waterfront townhomes that will be just steps to the Lake and private docks. They are very similar in nature to homes built at Marina Village on Geist. We have what we believe is the only site in Noblesville that has direct water access for new construction. There are multiple demographics that would have interest in living at Harborwalk, creating a diverse community that is able to enjoy a relaxed Lakeside lifestyle. We intend to offer a boat slip to each and every resident of Harbourwalk and hope to offer a small guest dock as part of the amenity package, so our residents can have visiting

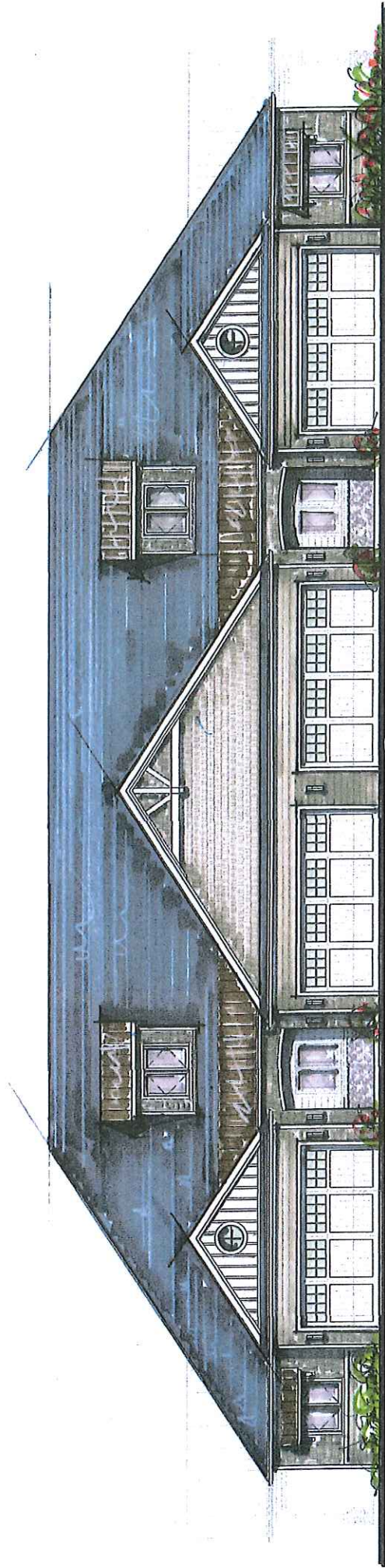


guests arrive via the lake. We feel very fortunate to have this unique opportunity as sites like this only come along once in a generation. As our plans to create this Class A community are fully vetted, we believe that our site will truly be the Crown Jewel on Morse. In closing, we are simply asking that Variances that were previously approved and recorded for this property be recognized and further granted in our favor for our development plans.

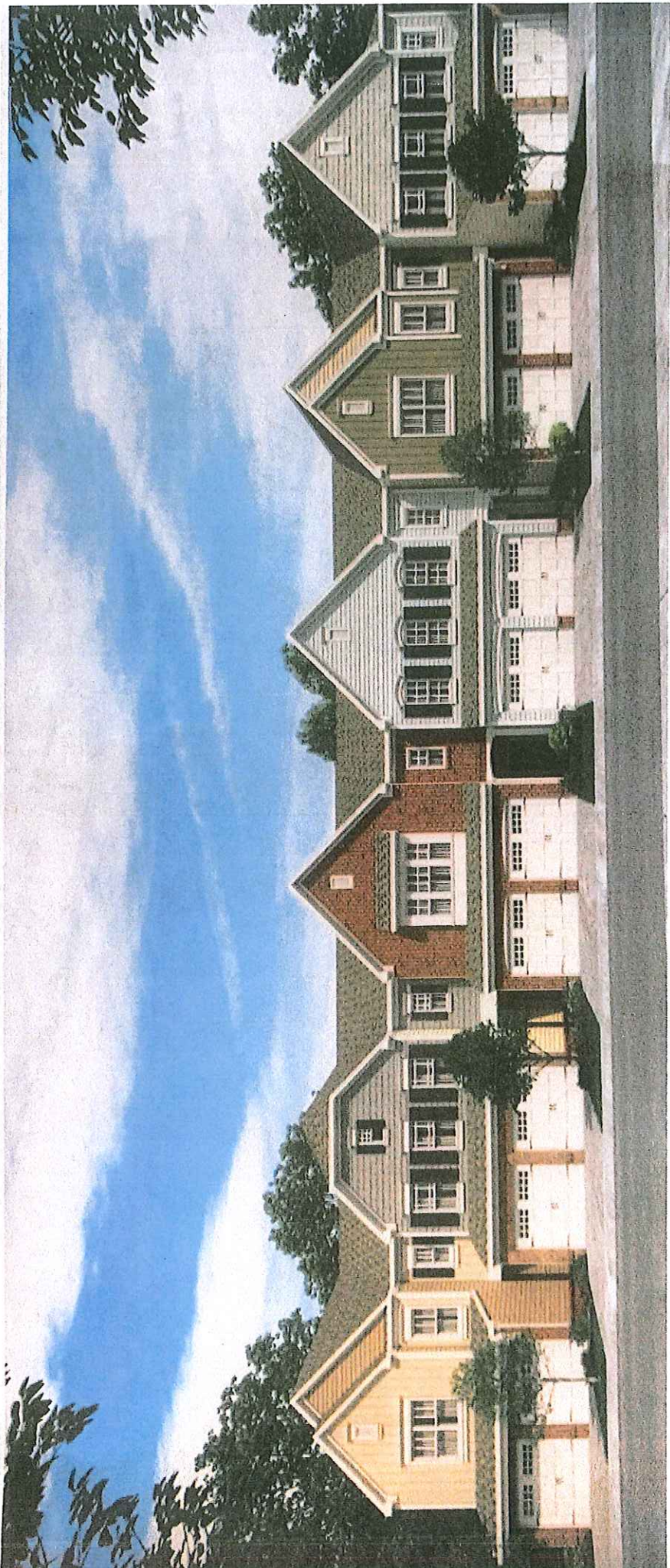








1 FRONT ELEVATION  
SCALE: 1/8"=1'-0"













1400  
(A)



CITY OF NOBLESVILLE  
JOHN DITSLEAR, MAYOR

STATE OF INDIANA )  
COUNTY OF HAMILTON )

SS:

200600021521  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
JENNIFER J HAYDEN  
04-21-2006 At 02:42 pm.  
VARIANCE 14.00

ACKNOWLEDGMENT OF VARIANCE

Document Cross Reference Numbers **9944726**

DEPARTMENT OF  
PLANNING

STEVEN R. HUNTLEY,  
DIRECTOR

THIS ACKNOWLEDGMENT, made this 13<sup>th</sup> day of April, 2006, by Steven R. Huntley, (hereinafter the "Director") WITNESSETH:

WHEREAS, on April 10, 2006 the Board of Zoning Appeals (BZA) heard the Development Standards Variance applications 06N-12-0050, 06N-12-0253, and 06N-12-0254 of Harbour Town Ventures II, LLC (hereinafter the "Applicant") with respect to the property known as Harbour Town Condominiums located at 20971 Shoreline Court, 5881 and 5895 Shoreline Parkway, 21000 Harbour Town Drive, and 5961 and 5964 and 6006 Waterfront Court (hereinafter the "Property"); and

WHEREAS, the Applicant gained approval of a Development Standards Variance UDO § Table 8.B to permit the reduction of the required front yard setback in an R-5 (Multi-Family Residential) zoning district (45 feet required, 10 feet requested along Little Chicago Road) (45 feet required, 15 feet requested along Carrigan Road); and

WHEREAS, the Applicant gained approval of a Development Standards Variance UDO § Table 8.B to permit an increase in the maximum building height in an R-5 (Multi-Family Residential) zoning district (45 feet permitted, 65 feet requested); and

WHEREAS, the Applicant gained approval of a Development Standards Variance UDO § Table 8.B Variance of Development Standards to permit a reduction in the required lot size per unit for a condominium complex in an R-5 (Multi-Family Residential) zoning district (3000 square feet required, 2400 square feet proposed); and

WHEREAS, the applications were approved as requested subject to the following conditions:

1. Based upon a previous court finding, the docks on Morse Reservoir shall only be used by residents (owners) of the Harbour Town Condominium Complex.
2. The petitioner shall record the agreement regarding the future dedication of right-of-way prior to the issuance of any building permits.
3. The Applicant shall record an acknowledgement of this variance approval and provide staff with a file stamped copy of such recorded document prior to the issuance of a building permit.



14701 CUMBERLAND ROAD, SUITE 300  
NOBLESVILLE, INDIANA 46060  
PHONE 317.776.6325 • FAX 317.776.4638

4. Any alterations to the approved site plans, other than those required by the Board of Zoning Appeals (BZA) or the Technical Advisory Committee (TAC) shall be submitted to the Planning and Development Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to such changes.


NOW, THEREFORE, the Director hereby declares that all the Property as it is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, or occupied and improved, is subject to these Development Standards Variance for Harbour Town Ventures II, LLC approved by the Noblesville Board of Zoning Appeals on April 10, 2006. These Development Standards Variances shall run with the land, and shall be binding upon the owner, heirs and assigns, and all parties having an interest in and to the real property or any part or parts thereof subject to such Development Standards Variances, and shall inure to the benefit of the Owner and every one of his successors in title to any real estate in the Property.

IN WITNESS WHEREOF, the Director has executed this instrument, on this 13<sup>th</sup> day of April, 2006. NOBLESVILLE DEPARTMENT OF PLANNING AND DEVELOPMENT

  
STEVEN R. HUNTLEY  
Director

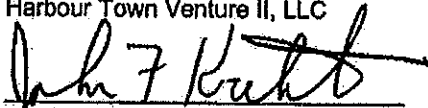
SUBSCRIBED AND SWORN to me, a Notary Public in and for said County of Madison this 13<sup>th</sup> day of April, 2006.

My Commission Expires: 5-31-09

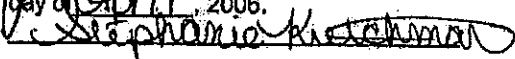
  
Printed: DEBRA DULAN  
NOTARY PUBLIC, a resident of Madison  
County, Indiana



APPLICANT  
Harbour Town Venture II, LLC



SUBSCRIBED AND SWORN to me, a Notary Public in and for said County and State, this 19 day of APRIL, 2006.



My Commission Expires:

Printed: Stephanie Kretchmar

NOTARY PUBLIC,

A resident of COOK County, Illinois



Document prepared by: Denise Aschleman, Zoning Administrator



EXHIBIT 5

4400  
14  
200 DOW

**CROSS-REFERENCES:** Instr. No. 1998-75215  
Instr. No. 2011067269  
Instr. No. 2011067268  
Instr. No. 2011041948  
Instr. No. 2010004465  
Instr. No. 8616574 (Bk 188, pg 483)  
Instr. No. 12961 (Bk 296, pg 613)

### EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made this 1st day of January, 2013, by and between CATALYST HT, LLC, a Delaware limited liability company ("Catalyst"), and CONDOMINIUM OWNER'S ASSOCIATION OF THE VILLAS ON MORSE LAKE, INC., an Indiana non-profit corporation ("Condo Association").

### RECITALS:

- A. Catalyst is majority owner and has the necessary voting authority under the By-laws of Condo Association to cause Condo Association to bind that certain parcel of real estate located in Hamilton County, Indiana, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Condominium Parcel").
- B. Condo Association is the duly-established association of owners of the Condominium Parcel.
- C. Catalyst is sole owner and has the right to bind that certain parcel of real estate located in Hamilton County, Indiana, more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "Retained Parcel").
- D. Catalyst is also the sole owner and has the right to bind that certain parcel of real estate located in Hamilton County, Indiana, more particularly described on Exhibit C attached hereto and incorporated herein by this reference (the "North Parcel") (the Condominium Parcel, the Retained Parcel, and the North Parcel are each deemed to be a "Parcel" hereunder and may be collectively referred to as the "Parcels").
- E. A vehicular and pedestrian access easement from Little Chicago Road over and across Shoreline Parkway was created under the Declaration of Restrictions, Covenants and Easements for Harbour Town Condominiums made as of January 25, 2008, and recorded as Document No. 2008004076, for the benefit of the Retained Parcel, as more particularly set forth in Paragraph 29 thereof (the "LCR Access Easement").

NOW, THEREFORE, in exchange for valuable consideration, the receipt and sufficiency of which are conclusively acknowledged, Catalyst and Condo Association hereby declare, grant, covenant, convey, reserve and agree as follows:

1. Recitals. The Recitals above are incorporated into this Agreement by reference and are true and correct in all material respects.

2. Shoreline Parkway Gate. An entrance gate is currently located on the Condominium Parcel across Shoreline Parkway, which restricts access between both the Condominium Parcel and the Retained Parcel and the right-of-way commonly known as Little Chicago Road and impinges on the LCR Access Easement (the "Gate").

i. Condo Association hereby grants, creates, declares, makes and conveys to Catalyst, its successors and assigns, a perpetual and non-exclusive easement to use and operate the Gate (the "Gate Easement") for the benefit of Catalyst, its successors and assigns, and any of its licensees and invitees and to allow the use of the LCR Access Easement. The Owner of the Condominium Parcel shall, at all times, provide the Owner of the Retained Parcel with the passcode to the entry keypad for the Gate (which passcode may not be changed without at least 30 days' prior notice to the Owner of the Retained Parcel and any future association of Owners of the Retained Parcel) and any keys, if applicable, to the Gate. At no time shall the Gate be removed, replaced, remodeled or relocated without the consent of the Owners of both the Condominium Parcel and the Retained Parcel, which consent shall not be unreasonably withheld. If the Gate at any time in the future is removed, the Gate Easement shall be deemed to apply to any subsequently existing gate that restricts access between the Retained Parcel and the right-of-way commonly known as Little Chicago Road.

ii. The Gate shall be the property and maintenance responsibility of the Owner of the Condominium Parcel, which shall keep the Gate in good condition and repair, provided that, in the event of the completion of future development on the Retained Parcel, the Owner of the Retained Parcel shall share the repair, maintenance and replacement costs of the Gate on an equal basis with the Owner of the Condominium Parcel.

iii. Regardless of whether or not future development has been constructed on the Retained Parcel, the Owner of the Retained Parcel shall have the right to approve of all construction, significant maintenance or repair, relocation, and removal work performed with respect to the Gate (collectively, the "Gate Work"), which approval shall not be unreasonably withheld, conditioned or delayed. If the Owner of the Retained Parcel approves of the Gate Work, the Owner of the Condominium Parcel shall: (a) diligently pursue the Gate Work to completion; (b) perform the Gate Work in a good and workmanlike manner and in compliance with any and all applicable governmental codes, rules and regulations of any applicable government authority; (c) pay any and all costs related to the Gate Work, subject to reimbursement by the Owner of the Retained Parcel in accordance with Section 2(ii) herein; (d) cause any and all mechanic's liens resulting therefrom to be released of record or bonded over promptly after receiving notice of same; and (e) promptly restore any portion of the Retained Parcel or the North Parcel to

its condition immediately prior to such Gate Work, including without limitation replacing turf and landscaping

3. Gate Encroachment Easement. A portion of the Gate is currently located on the North Parcel (the "Encroaching Gate Portion"). Catalyst hereby grants to Condo Association a non-exclusive, perpetual easement for the Encroaching Gate Portion to encroach onto the North Parcel for the benefit of and to be appurtenant to the Condominium Parcel. The Encroaching Gate Portion shall be the property and maintenance responsibility of the Owner of the Condominium Parcel as provided herein. This easement shall automatically terminate if the Owners of the Condominium Parcel and the Retained Parcel permanently remove the Encroaching Gate Portion from its currently existing location on the North Parcel in accordance with the provisions of this Agreement.

4. Boat Ramp Easement. Catalyst hereby grants to Condo Association a non-exclusive, perpetual easement for Condominium Parcel residents to use the boat ramp currently located on the Retained Parcel (the "Boat Ramp"), together with the rights of ingress and egress across any driveways, roadways, or access-ways now or hereafter located on the Retained Parcel for the purpose of accessing the Boat Ramp for the benefit of and to be appurtenant to the Condominium Parcel. The foregoing rights of ingress and egress in favor of Condo Association shall not include parking rights on the Retained Parcel.

5. Boat Dock Easement. Condo Association hereby grants to Catalyst a non-exclusive, perpetual easement for future Retained Parcel residents (if any), to use the boat docks currently located on the Condominium Parcel (the "Boat Docks") for the benefit of and to be appurtenant to the Retained Parcel (the "Dock Easement"). The Dock Easement shall also include the right to expand the Boat Docks (subject to the Owner of the Retained Parcel's securing any applicable government approvals and permissions), at the sole expense and election of the Owner of the Retained Parcel for use by future Retained Parcel residents (if any), in accordance with the provisions of Section 5(ii) below.

i. If the Owner of the Retained Parcel chooses to exercise its rights under the Dock Easement to use the Boat Docks, the Owner of the Retained Parcel shall be responsible for its pro rata share of all maintenance costs related to the Boat Docks, to be calculated as the number of boat slips located on the Boat Docks and utilized by the Owner of the Retained Parcel divided by the total number of boat slips located on the Boat Docks. The Owner of the Condominium Parcel shall be responsible for performing all maintenance with respect to the Boat Docks. The Owner of the Retained Parcel shall reimburse the Owner of the Condominium Parcel for its pro rata share of maintenance costs within fifteen (15) business days following the receipt of an invoice and supporting documentation from the Owner of the Condominium Parcel.

ii. If the Owner of the Retained Parcel chooses to exercise its rights under the Dock Easement to expand the Boat Docks (the "Boat Dock Expansion"), the Owner of the Retained Parcel shall submit to the Owner of the Condominium Parcel one set of construction plans regarding the Boat Dock Expansion (the "Expansion Plans"). The Owner of the Condominium Parcel shall have ten (10) days to review and approve the Expansion Plans, which approval shall not be unreasonably withheld, conditioned or

delayed. If the Owner of the Condominium Parcel approves of the Expansion Plans, the Owner of the Retained Parcel shall: (a) diligently pursue the construction of the Boat Dock Expansion to completion; (b) perform the Boat Dock Expansion in a good and workmanlike manner and in compliance with any and all applicable governmental codes, rules and regulations of any applicable government authority; (c) pay any and all costs related to the Boat Dock Expansion; and (d) cause any and all mechanic's liens resulting therefrom to be released of record or bonded over promptly after receiving notice of same. If the Owner of the Condominium Parcel does not approve of the Expansion Plans, it must provide written notice of such disapproval together with specific reasons for such disapproval, and the Owner of the Retained Parcel shall have the opportunity to revise the Expansion Plans to address the comments of the Owner of the Condominium Parcel. The Owner of the Condominium Parcel and the Owner of the Retained Parcel shall each use commercially reasonable efforts to work together to finalize Expansion Plans reasonably acceptable to both parties.

6. Signage Easement. Condo Association hereby grants to Catalyst a perpetual, non-exclusive and permanent sign easement for the installation, operation, maintenance, repair, removal, replacement and use of a sign (the "Sign") in, on, under, over, through and across the real estate more particularly cross-hatched on the attached Exhibit D (the "Sign Easement Area") for the benefit of and to be appurtenant to the Retained Parcel (the "Sign Easement"), with Catalyst having the right and privilege to enter upon, dig, lay, erect, construct, install, reconstruct, renew, operate, maintain, inspect, replace, remove and repair the Sign from time to time, provided, however, that the Condo Association shall have the right to approve the design and position within the Sign Easement Area of the Sign solely to assure that the same allows for identification of the name of the development situated upon the Retained Parcel in a manner reasonably equivalent to the identification of the condominium development situated upon the Condominium Parcel (such approval not to be unreasonably withheld, conditioned or delayed). Catalyst acknowledges that the Sign Easement shall only be used for identifying the name or other identifying information for the building or buildings to be constructed on the Retained Parcel, and for no other use or purpose without Condo Association's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. For purposes of clarification, Catalyst may share space on any then-existing sign used to identify the condominium development on the Condominium Parcel for the Sign, on an equal basis with the Condo Association, by incorporating the Sign onto such existing sign, or, at Catalyst's sole option, to the extent allowable under any applicable laws, regulations, ordinances, or codes (collectively, "Laws"), Catalyst shall have the right to construct a Sign, using a design, material(s), and color(s) within its sole discretion, to identify any development on the Retained Parcel separate from the sign used to identify the development on the Condominium Parcel, provided that such Sign shall not unreasonably obstruct the visibility of the existing sign used to identify the development on the Condominium Parcel. If such a separate sign is allowed under all applicable Laws, the Owner of the Retained Parcel shall be solely responsible for obtaining all necessary government licenses, permits or other approvals for the construction of the sign and solely responsible for maintaining the Sign. The Sign shall be constructed, maintained, repaired, operated, and replaced at the Owner of the Retained Parcel's sole expense, provided that, to the extent that the Sign is part of any sign used to identify the development on the Condominium Parcel, once installed, the Owner of the Retained Parcel shall be responsible for maintaining, repairing and replacing the same as necessary to keep the same in good order and condition and the Owner of the Condominium



Parcel shall reimburse the Owner of the Retained Parcel within forty-five (45) days of receiving an invoice for fifty percent (50%) of the costs so incurred by the Owner of the Retained Parcel together with reasonable evidence thereof. The Owner of the Condominium Parcel shall be solely responsible for the costs to repair and maintain the landscaping and lighting located within the Sign Easement Area, provided that, in the event the Owner of the Retained Parcel uses the Sign Easement (either by sharing space for the Sign on an existing sign or erecting a separate Sign), then the Owner of the Retained Parcel shall reimburse the Owner of the Condominium Parcel within forty-five (45) days of receiving an invoice for fifty percent (50%) of the reasonable costs of such repair and maintenance to the landscaping and lighting.

7. Utility Easements. Condo Association hereby grants, creates, declares, makes and conveys to Catalyst, its successors and assigns, a perpetual and non-exclusive easement in, on, under, over, through and across the Condominium Parcel for the benefit of and to be appurtenant to the Retained Parcel, for installing, maintaining, repairing, replacing, relocating, and removing utility and drainage facilities solely to the extent reasonably necessary to connect such utility and drainage facilities to any utility and drainage facilities located on the Condominium Parcel (the "Catalyst Utility Easement"). Catalyst hereby grants, creates, declares, makes and conveys to Condo Association, its successors and assigns, a perpetual and non-exclusive easement in, on, under, over, through and across the Retained Parcel for the benefit of and to be appurtenant to the Condominium Parcel, for installing, maintaining, repairing, replacing, relocating, and removing utility and drainage facilities solely to the extent reasonably necessary to connect such utility and drainage facilities to any utility and drainage facilities located on the Retained Parcel (the "Condo Utility Easement", and together with the Catalyst Utility Easement, the "Utility Easements"). In addition to the other terms and conditions of this Agreement, the Utility Easements are subject to the following restrictions, reservations and covenants:

i. The Utility Easements include the right to access and use those portions of the Condominium Parcel or the Retained Parcel, as applicable, reasonably necessary for the exercise of the rights granted by the Utility Easements.

ii. Connections to utility and drainage facilities situated on the burdened property shall be made at locations reasonably approved in writing by the owner of such burdened property and shall be placed underground whenever reasonably possible and shall in no case interfere with vehicular and pedestrian movement upon the burdened property.

iii. The Owner of the Condominium Parcel shall be responsible for the maintenance and repair of all utility and drainage facilities that exclusively serve the Condominium Parcel (whether or not located upon the Condominium Parcel). The Owner of the Retained Parcel shall be responsible for the maintenance and repair of all utility and drainage facilities that exclusively serve the Retained Parcel (whether or not located upon the Retained Parcel). Utility and drainage facilities that serve both the Condominium Parcel and the Retained Parcel are referred to herein as "Shared Facilities". The Owner of the Retained Parcel shall be responsible for the maintenance and repair of any Shared Facilities located on the Retained Parcel, and the Owner of the Condominium Parcel shall be responsible for the maintenance and repair of any Shared Facilities located on the Condominium Parcel. If any Owner (the "Defaulting Owner") fails to perform any

maintenance or repair required hereunder, the other Owner (the "Non-Defaulting Owner") may give the Defaulting Owner written notice of such failure. If the Defaulting Owner does not cure such failure within thirty (30) days of such notice, the Non-Defaulting Owner may undertake such maintenance and/or repairs, and shall be reimbursed for all costs and expenses incurred as a result of such undertakings.

iv. The Owner of the Condominium Parcel or the Owner of the Retained Parcel may from time to time relocate any utility facilities located on its Parcel that serve the other Parcel, provided that: (a) the Owner relocating such utilities gives reasonable prior written notice to the Owner benefited by such utilities in advance of such relocation; (b) the Owner relocating such utilities takes all reasonable measures to minimize any disruption of utility services associated with such relocation; and (c) the Owner relocating such utilities pays for the entire cost of the relocation pursuant to plans and specifications approved by the Owner benefited by such utilities (such approval not to be unreasonably withheld, conditioned or delayed).

v. Any Owner undertaking any maintenance, repair or replacement pursuant to this Agreement shall: (a) diligently pursue the same to completion; (b) perform the same in a good and workmanlike manner and in compliance with all applicable laws, regulations, rules, ordinances and codes, including without limitation obtaining all necessary permits and approvals; (c) use commercially reasonable efforts to minimize any disruption or interference with the use and conduct of business upon the Parcels; (d) subject to receipt of any reimbursement or payment provided hereunder, cause any and all mechanic's liens filed against a Parcel not owned by such Owner and arising out of such maintenance, repair or replacement to be released of record or bonded over promptly after receiving notice of same; and (e) promptly restore any portion of a Parcel not owned by such party to its condition immediately prior to such maintenance, repair or replacement, including without limitation replacing turf and landscaping, provided that no such restoration work shall be required of a Non-Defaulting Owner performing work on a Defaulting Owner's Parcel. Except for maintenance, repairs or replacements undertaken in an emergency situation or by a Non-Defaulting Owner pursuant to Section 7(iii) herein, any Owner performing any maintenance, repair or replacement shall, at least fifteen (15) days prior to commencing such work, notify the Owner of a Parcel upon which work will be performed. Such notice shall include a description of the work to be performed and the anticipated schedule for such work. Upon receipt of any such notice (a "Work Notice"), any Owner shall have the right to request a meeting with the performing Owner and its contractors that will perform the work. Upon such request, the performing Owner and the Owner requesting the meeting shall cooperate to coordinate such meeting prior to the commencement of such work. Notwithstanding anything to the contrary herein, an Owner shall be responsible for one hundred percent (100%) of the costs of any maintenance, repair or replacement required due to the negligence or willful misconduct of such Owner or its contractors, employees, agents, licensees, lessees or invitees.

8. Indemnification. Each Owner (the "Indemnifying Owner") shall defend, indemnify and hold the other Owners (each an "Indemnified Owner") harmless from and against any and all losses, damages, claims, liabilities and expenses, including without limitation

reasonable attorneys' fees (collectively "Losses"), incurred by the Indemnified Owner and arising out of or in connection with (i) acts or work performed by the Indemnifying Owner, its contractors, employees, agents, licensees, lessees or invitees on the Indemnified Owner's parcel; (ii) the exercise of any rights under this Agreement by the Indemnifying Owner, its contractors, employees, agents, licensees, lessees or invitees; (iii) any mechanic's lien filed on the Indemnified Owner's Parcel as a result of work performed by, or at the request of, the Indemnifying Owner; or (iv) the breach of this Agreement by the Indemnified Owner; except to the extent the Losses are caused by the negligence, intentional misconduct, or breach of this Agreement by the Indemnified Owner, its contractors, employees, agents, licensees, lessees or invitees. .

9. Modifications. This Agreement and any provision, covenant, or restriction contained within it may be terminated, extended, modified, or amended with the written consent of the Owners of the affected Parcels or their respective successors and assigns or as otherwise set forth in Section 3. No termination, extension, modification, or amendment will be effective unless a written instrument setting forth its terms has been executed, acknowledged, and recorded in the Office of the Recorder of Hamilton County, Indiana. No lessee, licensee, or other person having a possessory interest, other than an owner of a Parcel or portion thereof, will be required to join in the execution of or consent to any act taken in accordance with this Section 9.

10. Severability. If any clause, sentence, or other portion of the terms, covenants, and restrictions of this Agreement becomes illegal, null, or void for any reason, or be held by any court of competent jurisdiction to be so, the remaining portions will remain in full force and effect.

11. Covenants Run With Land. The licenses, rights, easements, covenants, restrictions, and provisions contained in this Agreement shall bind and inure to the benefit of Catalyst and Condo Association, and their respective successors and assigns, and shall run with the land. The term "Owner" shall refer to the record owner(s) of fee simple title to the Condominium Parcel or the Retained Parcel, as may be the case from time to time.

12. Headings. The caption headings of the various sections of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

13. No Dedication. Nothing contained herein shall be construed as either creating a dedication or grant of any rights to the public.

14. Governing Law. This Agreement shall be governed in all respects by law of the State of Indiana.

[Signature Pages Follow.]




State of California            )  
  ) ss.  
County of Los Angeles        )

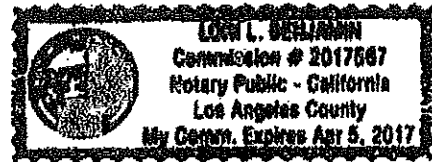
On May 10, 2013, before me, Lori L. Benjamin, a Notary Public, personally appeared Scott Dew, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

  
\_\_\_\_\_



(seal)

CONDO ASSOCIATION:

CONDOMINIUM OWNER'S ASSOCIATION OF  
THE VILLAS ON MORSE LAKE, INC., an  
Indiana non-profit corporation

By: [Signature]

Printed: Michael V Waddick

Title: President

STATE OF <sup>MINN</sup> ~~INDIANA~~ Minnesota )  
COUNTY OF Hennepin ) SS:

I, Matthew Hunter, a Notary Public in and for said County, in the State  
aforesaid, do hereby certify that Michael Waddick, the President of  
CONDOMINIUM OWNER'S ASSOCIATION OF THE VILLAS ON MORSE LAKE, INC., an  
Indiana non-profit corporation, personally appeared before me this day in person and, in such  
capacity and acknowledged the execution of the foregoing Easement Agreement for and on  
behalf of said corporation.

Given under my hand and notarial seal on May 13<sup>th</sup>, 2013.



[Signature]  
Notary Public

My Commission Expires:  
01-31-17

County of Residence:  
Hennepin

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Kenneth B. Chigges, Esq.

This instrument was prepared by and return after recording to Kenneth B. Chigges, Esq., ICE MILLER LLP, One American Square, Ste. 2900, Indianapolis, IN 46282-0200.

## Exhibit 6



Looking west from eastern property line at the Villas on Morse Lake



Looking southwest from northeastern corner of main parcel

## Exhibit 6



Looking southeast along eastern property line, just east of proposed Block 8



Looking east at entry gate off of Little Chicago Road, with views of mature on-site trees