The Noblesville Board of Zoning Appeals met on Monday, November 4, 2019. Members in attendance were as follows:

Mike Field……..... Chairman
Dave Burtner..... Vice-Chairman
James Hanlon ..... Citizen Member
Dan Mac Innis ..... Citizen Member
Barry McNulty ..... Citizen Member

Others in attendance included: Planning Director Sarah Reed, Assistant Planning Director Caleb Gutshall, Associate Planner Rina Neeley, Associate Planner Oksana Polhuy, Senior Planner Denise Aschleman, Senior Planner David Hirschle, City Attorney Mike Howard, and members of the general public.

Chairman Field calls the meeting to order at 6:00 p.m.

APPROVAL OF MINUTES

Mr. Field states that a decision on the minutes of the October 2019 meeting will be sought at the Board's December meeting.

APPROVAL OF FINDINGS OF FACT

Motion by Mr. Mac Innis, seconded by Mr. McNulty to approve the October 7, 2019 Findings of Fact as presented. AYE: Burtner, Hanlon, Mac Innis, Field, McNulty. The motion carries 5-0.

NEW BUSINESS

1.	BZNA-0126-2019	
	Location:	2222 Sheridan Road
	Applicant:	Transformations Center for Healing, Inc.
	Description:	UDO § 8.B.2.B and UDO § Appendix C -- Variance of Use to permit a convalescent facility in an R-1 (Low-Density Single-Family Residential) zoning district.

Mr. David Hirschle states that this R-1-zoned property is located on the north side of Sheridan Road, about 1000 feet northwest of South Harbour Drive. He states that it is surrounded by residential zoning and residential uses, with the exception that the property to the east contains only a driveway leading to the Life Church Assembly of God building two properties to the east.

Mr. Hirschle describes the existing use as a residential recovery house for women suffering from substance use disorder. He relates that the applicant was granted a Land Use Variance by this Board three years ago, and, with the expiration of the approval, the applicant wishes to make the use permanent through a new Land Use Variance application. He states that in the Unified Development Ordinance's (UDO) Schedule of Uses, the use falls under "Nursing/Retirement/Convalescent Facility," which is listed as a prohibited use in the R-1 district. He reads the definition of "Convalescent Home," defined in the UDO as "an establishment for the care or assisted living of the aged or infirm, or a place of rest for those suffering bodily disorders," emphasizing the latter as applying to the existing land use.

Mr. Hirschle provides a summary of the land use, relating that Transformations Center for Healing offers a holistic treatment model for its residents, addressing the whole person – the physical, the psychological, the spiritual, behaviors, life skills & tools, and relationships. Mr. Hirschle indicates that there are several important points that Staff wants to make sure are heard this evening, and provides these as follows:

- The program duration is 12 months, consisting of three phases containing Physical Wellness Programs, Psychological Programs, Spiritual Programs, and Life Skills components. The program involves community service and work duties, and a possibility of living in a sober living transitional home after Phase 3.
- Transformations Center for Healing is a tax-exempt public charity.
- The maximum number of residents accommodated is 10, attended by two staff members.
- The Center is not a medical facility and does not have medical personnel on staff.
- Residents will not be de-toxing at the facility.

- The use is not a locked facility.
- The structure exceeds the Required Building Score for Fire Safety, Means of Egress, and General Safety in Section 3412 of the Indiana Building Code.

Mr. Hirschle indicates that two letters of support for the application [White River Christian Church and Trevor Vautau Memorial Golf Outing] have been received since the Board received its staff report. He supplies these to the Board and for incorporation into the public record as Exhibit A.

Mr. Hirschle observes that, from a planning standpoint, staff asks if the use is disruptive to the character of the area, and it appears, from all indications, that it is not. He states there is no outward sign that the structure is anything but a single-family residential structure, and that the Department of Planning does not have record of any complaint lodged against it, which must be credited to the current operator. He suggests the possibilities that, in the future, a new operator other than Transformations may seek to continue the use, or the property may be under different ownership. He suggests that, since the current property owner allows the current operator use of the structure rent-free, any number of changes in the operation may occur if either of these possibilities happen. He provides two examples, one being an increase in residents and the other being the filing of a sign permit application, both driven by the need to bring in more revenue.

Mr. Field ask if Planning is recommending approval only for this particular user. Mr. Hirschle states that this correct, that there would be no specific time limit for the use, except that when Transformations no longer operates the use, its approval would cease at this site.

Mr. Hirschle states that Planning recommends approval of the use and requests that the following conditions be added:

1. An approval shall not run with the land, but shall be valid only for this applicant. At such time that the applicant no longer operates the use at this site, it shall revert to a "Permitted" use within the R-1 zoning district, unless rezoned.
2. The use shall not exhibit a ground sign.
3. There shall be no enclosed expansion of the principal building by greater than two hundred (200) square feet, other than that approved by the Board through a new hearing.

Mr. Hirschle includes the two conditions that are added to every variance approval, those having to do with signing of the Acknowledgement of Variance and with alterations to the use or site plan possibly being submitted to the Board for re-review.

Ms. Laci Giboney, representing the applicant at 2222 Sheridan Road, appears before the Board. Mr. Field ask if the applicant has any objection to the five conditions requested by Staff. Ms. Giboney responds that she does not. Mr. Field asks specifically if the applicant has any objection to an approval that does not run with the land. Ms. Giboney states that she does not.

Mr. Field opens the public hearing. Seeing nobody wishing to speak, Mr. Field closes the public hearing.

Motion by Mr. McNulty, seconded by Mr. Burtner, to approve the Land Use Variance application, based on the following Findings of Fact:

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 need for the proposed variance arises from some condition peculiar to the property involved.
4. 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.
5. The approval of this variance does not interfere substantially with the provisions of the Comprehensive Master Plan for the City of Noblesville, Indiana.

With the following specific conditions:

1. The approval shall not run with the land, but shall be valid only for this applicant. At such time that the applicant no longer operates the use at this site, it shall revert to a "Permitted" use within the R-1 zoning district, unless rezoned.
2. The use shall not exhibit a ground sign.
3. There shall be no enclosed expansion of the principal building by greater than two hundred (200) square feet, other than that approved by the Board through a new hearing.
4. The Applicant shall 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 approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), 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.

AYE: Burtner, Hanlon, Field, Mac Innis, McNulty. The motion carries 5-0.

2. BZNA-0131-2019 / BZNA-0132-2019 / BZNA-0144-2019

Location: 3501 Conner Street

Applicant: Jeff Meyer

Description:
a) UDO § 8.C.4.F and Appendix C – Variance of Use to permit outdoor storage
b) UDO § 11.C.1.F.3.a and §11.C.1.F.5 – Variance of Development Standards to permit a designation sign in an integrated development on a property that does not have minimum 300 feet of frontage and to permit construction of a designation sign taller than permitted.
c) UDO § 8.C.4.D and Appendix C – Conditional Use to permit outdoor display

Ms. Oksana Polhuy states that the subject site is located on the south side of Conner Street, about 0.4 miles East of State Road 37. She states that there are three lots involved in the application, including 3499 Conner Street and a vacant lot behind 3501 Conner Street. She summarizes surrounding land uses as industrial to the north, agricultural to the east, vacant land to the south, and commercial use to the west.

Ms. Polhuy describes the first variance as seeking a designation sign for the site, and allowance for its exceeding maximum allowable height. She states that 3499 and 3501 Conner Street are considered an integrated development, and integrated developments are normally allowed a designation sign as well as one wall sign per tenant. She states that a designation sign is permitted only on land that has at least 300 feet of street frontage, which is not the case for this property. She states that the proposed height of the sign would be just four inches above the maximum allowable height. She displays on overhead an illustration of the proposed sign and states that it would be located about 80 feet from the roadway due to the location of a drainage and utility easement preventing a closer placement to the road.

Ms. Polhuy describes the Conditional Use request as being for an outdoor display area for lawn mowers 200 feet away from the road on 3501 Conner, and a second variance request to allow outdoor storage on the vacant lot south of 3501 Conner. She indicates that outdoor storage has been seen at this property in the past few years, and comes to the Board as the result of a zoning violation. She adds that the Comprehensive Plan foresees the properties as Office Industrial Flex, which would allow warehousing and outdoor storage, but outdoor storage is not allowed at present. She states that the applicant proposes fencing around the outdoor storage area, and staff recommends an opacity of 90%. She adds that both the display area and the outdoor storage area would need to be paved to meet this standard ordinance requirement.

Ms. Polhuy observes that the property has been split in the past, but not platted, and so staff recommends that the applicant apply for a variance of development standards to allow a lot without frontage before that lot is used for outdoor storage.

Mr. Field asks if the lot has been split or is still owned by the same property owner and is being leased to another. Ms. Sarah Reed states that the lot has been split for sale at the County by metes and bounds rather than by the required platting process. Mr. Field asks if the split lot is still owned by the same party owning the lot with street frontage. He questions the categorization of a lot without frontage if the split lot has not been sold.

Mr. Hanlon states that his brother, Bob Hanlon, has an agreement with the applicant, but that there is no conflict of interest and he will not be recusing himself from voting on the matter this evening. Mr. Howard suggests that Board member Hanlon will "receive no pecuniary interest in this transaction." Mr. Hanlon confirms that this is correct.

Mr. Mac Innis asks whether the ingress/egress from the outside storage lot will be gated. Ms. Polhuy responds that it appears from the site plan that a gate is proposed.

Mr. Jeff Meyer, 18247 Pennington Road, Noblesville, introduces himself. Mr. Field asks if Mr. Meyer has any objection to meeting the eight conditions recommended in the staff report. Mr. Meyer responds that he has "not one issue."

Mr. Field opens the public hearing. As nobody steps up to speak, Mr. Field closes the public hearing.

Mr. Field states that "directional signs in this end of town are desperately needed."

Mr. McNulty asks if there an inherent problem in having a lot without road frontage and without easements. Mr. Howard responds that an easement does exist to allow access to the split lot. He adds that there is also an agreement to divide maintenance costs for the drive. He adds that fewer road cuts on State Road 32 are preferable.

Motion by Mr. Hanlon, seconded by Mr. Burtner to approve the Conditional Use and both Variances based upon the Findings of Fact listed in the staff report, and with the following conditions, as listed in the staff report:

1. All existing ground signs on lots 1 and 2 of Gill Subdivision shall be removed before the designation sign construction is finished.
2. The outdoor display area shall be limited to the 15 x 40 square feet pad displayed on the site plan (Exhibit 5).
3. The outdoor display and storage areas shall be paved according to the design and improvement standards of parking and driveway areas in the Unified Development Ordinance.
4. The outdoor storage area shall be completely screened by a solid fence or wall of not less than seven (7) feet tall and that is at least ninety percent (90%) opaque.
5. Materials stored behind any screening wall or fence shall be stacked no higher than one (1) foot below the top of the wall or fence. Vehicles, trailers, mobile machinery, or equipment shall be stored in their lowest elevation. No vehicle, trailer, mobile machinery, or equipment shall be used for nor constitute permanent storage.
6. A variance of development standards to permit a lot without street frontage shall be applied for within ninety (90) days of this approval.
7. The Applicant shall sign the Acknowledgement of Variance document prepared by the Department of Planning and Development 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.
8. Any alterations to the approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Department of Planning and Development prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

AYE: Burtner, Hanlon, Field, Mac Innis, McNulty. The motion carries 5-0.

3. BZNA-0133-2019 / BZNA-0143-2019

Location: 21585 Cicero Road

Applicant: Thomas J. Weinschenk

Description: a) UDO § Table 8.B – Variance of Development Standards to allow the reduction of the minimum lot size in the R-1 (Low-Density Single-Family Residential) zoning district for a future 2-lot subdivision.
b) UDO § 9.B.2.A and § 9.B.2.E – Variance of Development Standards to permit an existing barn on a future lot without a primary residential use.

Ms. Rina Neeley states that the property in question consists of 9.36 acres on the east side of Cicero Road at its intersection with 216th Street. She states that the property is surrounded by single-family residential and agricultural uses in all directions, as well as a small industrial park to the south. She relates that the applicant would like to divide the acreage into two lots in order to allow single-family residential construction on the resulting 5.63-acre lot, leaving the lot with the existing house at 1.84 acres and below the 3-acre minimum lot size. She states also that an existing barn on the resulting smaller lot is requested to be allowed to remain in order to allow storage of material while the single-family residence is being constructed on the lot. She points out on overhead the location of an existing drive cut onto Cicero Road as the reasoning for the dividing of the lot as proposed. She states that the future 5.63-acre lot is constrained by gas pipelines and a legal drain in its southern half. She ends by recommending approval of the variances with conditions listed in the staff report.

Mr. Nathan Althouse, Miller Surveying, 948 Conner Street, Noblesville, introduces himself as representing the applicant and offers to answer any questions.

Mr. Field opens the public hearing. As nobody steps up to speak, Mr. Field closes the public hearing.

Motion by Mr. Burtner, seconded by Mr. Mac Innis, to approve both variances based on the Findings of Fact listed in the staff report, and with the following conditions, as listed in the staff report:

1. The Applicant shall file a building permit for the construction of a primary residential structure on the future south lot (shown as Lot 2 on the attached Site Plan). The building permit must be issued within five (5) years of this approval.
2. The accessory structures on proposed Lots 1 and 2 shall be used for the storage of personal materials only and shall not be used for any commercial or separate residential purpose.
3. The Applicant shall sign the Acknowledgement of Variance document prepared by the Department of Planning and Development 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.
4. Any alterations to the approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Department of Planning and Development prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

AYE: Burtner, Hanlon, Field, Mac Innis, McNulty. The motion carries 5-0.

4. BZNA-0142-2019

Location: 5140 and 5160 Caprock Drive

Applicant: Amanda Hulback (applicant)

Description: UDO § 4.D.2 – Appeal of a determination of the Director of Planning and Development regarding a minor amendment to the Slater Farms planned development ordinance.

Mr. Steve Unger, attorney representing the Noblesville Department of Planning, explains he has been asked to introduce this item because it is a little bit different than your typical variance. He states with a variance you guys are making the decision in the first instance. He states what they are here for tonight is actually an appeal from a decision of the Planning Director and her staff. He states the Director of Planning under the ordinance is charged with the interpretation of the Unified Development Ordinance, and any time that the Director makes a determination, the Board may review that determination if a party appeals the determination. He states that the Board's review of the appeal is guided by the standard of whether the decision of the Director is arbitrary, ill-considered, or an erroneous decision, giving deference to the spirit and intent of the ordinance and deference to the decision of the Planning Director. He states arbitrary and capricious means that it is not really based on anything and not grounded in fact or law. He explains that in this case we have a determination that was a Minor Change allowing two slab foundations in a Planned Unit Development that was acceptable. He states the determination was that this was an acceptable Minor Change. He states Ms. Aschleman will get into this, but under the UDO there are eight tests of acceptability. He states the Department determined that this ultimately met those tests and so the question for this Board is was that decision arbitrary, ill-considered, or erroneous giving deference to the Department. He states he will now let Ms. Aschleman go through the Staff report and he will be here to answer any questions.

Mr. Howard states that he concurs with Mr. Unger's summary. He adds that the standard for review is not that the Board might have decided differently, but whether the person had authority provided by the ordinance to make the decision, whether the person followed the standards set out in the ordinance to make the decision, and whether there was an abuse of discretion.

Ms. Denise Aschleman explains that the appeal deals with two lots in Slater Woods, Section 6, part of the larger Slater Farms Planned Development located on either side of 169th Street, just east of Gray Road. She relates that in June 2019, the developer approached the Director of Planning regarding soil concerns on Lots 52 through 56 in Section 6. She states that the Architectural Standards for the Slater Woods Planned Development states that slab foundations are not allowed. She states that caused concerns for the builder, Lennar Homes as they had preliminary investigation that indicated basement construction on the lots could be problematic and that a slab foundation would be the best method of construction. In August 2019, the developer provided the Department of Planning with a copy of a geotechnical report (Exhibit 6) prepared by Alt & Witzig which showed elevated water levels and granular material composed of wet sand and gravel on Lots 52 and 53 between the depths of seven feet and fifteen feet. She adds that the same report indicated clay on Lots 54 through 56 that would allow basement construction on those lots. She summarizes that the report's results for Lots 52 and 53 meant that basement construction on these sites would result in severe difficulty during construction and extensive long-term dewatering after the basements were completed.

Ms. Aschleman relates that the Director of Planning looked at the procedures for changing a Planned Development that are categorized as a Minor Change and a Major Change. She states the Director landed on the Minor Change which states that she may approve a Minor Change to a Development Plan that meets the eight tests contained in the UDO without going through the public hearing process. She states what that basically means is that they submit the request to the Department and it is processed at a Staff level. She notes that Mr. Unger stated the tests that exist in the ordinance to determine acceptability. She states there is a chart that starts on page 3 of the Staff report that lists out those test questions and Staff's analysis of why in this instance we believe it should be considered under a Minor Change. She provides the first test as whether the change is significant in terms of magnitude in relation to the original approval. She states that there are 122 lots in the Slater Woods section of the subdivision, meaning that the two lots account for just over 1% of the total lots. She states Slater Farms is comprised of 344 lots and it is around a half of a percent of the lots within the entire subdivision. She states the examples of a Major Change contained in the UDO actually characterizes them as 10% or more of the magnitude as a Major change.

Mr. Field asks why the Department of Planning decided that two lots could have slabs and that three could not. Ms. Aschleman responds what the builder found as they did additional testing, and they actually relayed to us that someone accidentally dug a basement on Lot 54. She notes that they knew that Lots 55 and 56 were okay based upon their testing locations, but they didn't know what happened in between. She adds that when they dug a basement on Lot 54 that did not exhibit water problems, the developer amended the request and reduced the request, and as they got additional information they came back asked for less.

Ms. Aschleman continues to the second test is does the proposed change modify any use that the development approval originally included. She answers the use remains a residential use in a residential subdivision, and that does not change depending on the foundation construction. She provides the third test as is there an impact visually or in terms of an amenity. She answers by indicating that the change does not affect an amenity like a park or a pool, and that there is generally an insignificant visual difference between a house on a slab and one with a basement. Mr. MacInnis asks what they can see. Ms. Aschleman states she will let the applicant answer that question. She states they have pictures of the same elevation on a basement and a slab foundation. Mr. Field states he may be missing something here. He states they originally wanted five lots, and staff has now granted two and they only want two so why are they here. Ms. Aschleman states she will have to let the HOA address why they appealed the Director's decision.

She provides the fourth test as would the interests of any third party that participated in the original public hearing, or received notice of the original public hearing, be disadvantaged in any way. She answers this by stating that the homeowners' association appealing this determination could not have been in the original notice area. She states there were thirteen people that spoke at the Plan Commission hearing and no one spoke at the Council. She states those speaking at the Plan Commission hearing, concerns expressed were related not to foundations, but to buffer yards and mounding, drainage, traffic, preservation of trees, fire protection, sewer capacity, and school capacity. She states the proposed change does not affect any of those issues, therefore it can not impact anyone in the original notice of public hearing. Ms. Aschleman moves on to the fifth test of does it reverse a design improvement secured during the public hearing process. She answers that the Plan Commission did not require, but the developer offered, the prohibition of slab foundations, so it was not a design improvement sought by and secured by the Plan Commission. The sixth test, as related by Ms. Aschleman, is are there any changes to exterior materials that would adversely affect the character or appearance of the development. She answers that the exterior materials of the homes are not changing, and so there would be no physical changes that affect character. She provides the final item as is the proposed change contrary to a condition, stipulation, provision, waiver, or governing agreement of the original approval. She answers that there were no such attachments to the original approval related to this issue. She concludes that based upon those test Staff truly believes that this should proceed as a Minor Change.

Ms. Aschleman turns to the reasoning given in the narrative statement provided by the Slater Farms Homeowners Association as to why the determination should not be considered a Minor change. She states that the HOA assertion is that there is a visual impact, the change does disadvantage a party which is the homeowners and the HOA, the change does reverse a design improvement added during the public hearing process on the original PD, and is in violation of one of the items within the original ordinance. She states that the HOA narrative addressed four further concerns, the first being that the sidewalk is within a drainage and sewer utility easement. She responds to this by stating that the site plan for the building permit shows the sidewalk outside of the 20-foot drainage and utility easement, and it complies with all development regulations as shown. She relates that the second concern is that the foundations on Lots 52 and 53 will not be below the frost line. She addresses this by stating that the building code requires footings to extend to at or below the frost line. She relates the third concern that the groundwater table was present at these lots. She responds by observing that this argument actually supports the Director's determination to approve the Minor Change. She states the current application is going forward because the City has concerns about the water table in this location and the additional maintenance and burden that a basement would have on future homeowners if installed on the lot. She adds that the fourth concern revolved around home values, and responds that the appellant has not provided expert evidence on any effect on home values. She adds, however, that a home on a slab is not likely to have as much square footage as a home with a basement. She states contained on page 5 of the Staff report is a statement of facts and conclusions relating to the information in the Staff report. She states there are not findings of fact as they would be used to for the variances. She summarizes that staff's position is that the determination was an acceptable Minor change and that the Board should affirm the Director's determination and deny the appeal of such determination. Mr. Hanlon asks if they decide to go that way can they say it is based upon facts and conclusions listed in the staff report. Ms. Aschleman responds yes.

Mr. Ty Rinehart, Land Acquisition Manager for Lennar Homes, 9025 River Road, Indianapolis, Indiana, states they were in front of the Architectural Review Board to get their elevations

approved in June 2016. He states at that time they had already done some due diligence and they had identified on those five lots that though they did not hit water, they had found significant sand and gravel which indicated that might be a problem. He states at that point in time they brought that up and asked for and were granted permission to put slabs on those lots if they ran into a problem. He relates that it was later determined that the Architectural Review Board did not have authority for that approval, which led to the request before the Director of Planning. He states they knew there was a problem so they did soil borings on Lots 53 and 56. He states 56 came out clean, and 53 was a problem so they hit gravel and they knew there was a lot of sand and gravel. He states in the interim, there was another boring done and they determined the problem was actually very narrow. He states they dug a basement on Lot 54 and they had no issues on that lot. He states that the water problem was eventually confined to Lots 52 and 53. He submits photographs of the water level on Lot 52 post-excavation and states that the water level steadied at five or six feet from the surface. He states the contractor burned out two motors on a sump pump trying to dewater the hole. He also submits photographs of the material dug from Lot 52, consisting of a large volume of rock. He states when they encountered the problem and were unable to dewater the hole they engaged Alt & Witzig to come out and give some recommendations. He states they realized they had a problem, filled the hole in with compactible material, and got it back to grade to possibly complete a slab. He states that to be honest if they could put a basement in there they would do that because they spent a lot of money on digging that basement out, bringing material back in, and compacting the material. He states the only reason that they are asking that is because quite frankly even if you told him they could build a basement they wouldn't because they know it would be giving the homeowners of the future a problem. He states it would be a defective house and there would be warranty problems.

Mr. Jacob Renkin of Alt & Witzig, 4105 West 99th Street, Carmel, Indiana, confirms much of the history of testing and excavation on Lots 52 through 56 provided this evening. He states they recommended the slab construction on those lots because in similar situations there have been long term dewatering issues. Mr. Field asks he foresees any long term issues slabs placed on Lots 52 and 53 and if they would eventually sink or tilt. Before an answer could be provided, Mr. Hanlon asks if the water is standing water or if it moves. Mr. Renkin answers that he was not asked to determine where the water was coming from or where it was going. He states that with granular materials, water is able to pass through it quickly. He informs that, in central Indiana, when dealing with clays, one is dealing in shallow groundwater, but in clay the water is moving slow enough that a standard sump pump is able to keep up with it, while with granular materials, it is not. Mr. McNulty asks as to Mr. Renkin's credentials. Mr. Renkin provides his title as Project Engineer, having passed the Fundamentals of Engineering exam, and his certification is Engineer in Training.

Mr. Rinehart he has one more thing to show that relates to the question about aesthetics being hard to see. He refers to a photo sheet that he hands out that show a house on the top that is on the top is on a slab, and the house on the bottom is on a basement. He states there is very little differentiation between the two. He states it is very difficult to tell the difference. Ms. Aschleman refers to this as Exhibit 10.

Ms. Amanda Hulback, 5202 Rangewood Drive, Noblesville, board Secretary of the Slater Farms Homeowners Association, representing the appellant, states that the reason for the appeal is that the lots in question were approved and permitted to be slab homes by the Planning and Zoning Department of Noblesville. She states the permits on lots 52 and 53 specifically go against the regulations for architectural review that prohibit slab foundations.

Mr. Field asks why the appellant cares about this issue. Ms. Hulback states that the homeowners were not notified. She states understanding they were buying property in this community and that slab homes were not permitted. She states there was a rumor going around the community that slab homes were going to be put in by Lennar, and some homeowners had concerns that the slab homes would degrade the value of homes, as well as they knew that there were issues from a water standpoint with Lots 52 and 53 just by what was going on. She adds that their opinion is that this change did not constitute a Minor Change and they felt in their eyes that it should have been a Major Change and homeowners and the HOA should have been notified this was taking place.

Mr. Jim Redding, 4945 Waterhaven Drive, Noblesville, President and Treasurer of the Slater Farms Homeowners Association, states that the Association first became aware on September

18, 2019 that slab homes were being considered, and that he visited the Department of Planning on September 19. He refers to a site plan and a pre-construction evaluation certificate approved for Lot 53 by the Department on August 19. He states that the same approval was given for Lot 52 on August 21. He states that he asked for a copy of the waiver, which he later found out was the wrong term. He continues, citing September 23 as the day the developer signed a Project Application for Amendment to Adopted Planned Development, with the owner signing the document on September 25. Mr. Field asks where this is all headed. Mr. Redding states that the application was approved by the Department on September 25, was approved on September 25, and was out of the system on October 2.

Mr. Howard asks for him to get to the why. Mr. Redding comes to the point that 37 days passed from the time the first permit was issued until the time that an application for Amendment to Adopted Planned Development was submitted. Mr. Burtner states that they are getting a lot of information, but why does it matter. Mr. Redding states that the correct process was not followed, that the approvals for the slabs were given before an application for the same purpose was turned in. Mr. Field asks if the opposition is to the process that was followed rather than the outcome. Mr. Redding refers to a comment made earlier this evening to the effect of was the process followed. He states that the process was not followed in this case. Mr. Howard counters, recalling his statement as being whether the Director had authority to make the decision under the ordinance. Mr. Field asks what relief is being sought. Mr. Redding states that since the process was not followed because, according to the ordinance, Minor changes are to be recorded at the County Courthouse, and failure to accomplish this makes the change a Major change. He states that earlier today he tried to find a copy of this recorded document. He states he does not know if it was recorded or not. He states that they believe that the process was not followed.

Mr. Redding continues, stating that they believe there is a visual difference between a slab home and a home with a basement and that is part of the remedy that they want. He states that a basement is obviously the preferred, and is allowed according to the ordinance. He observes that if it is problematic and we can not do a basement there then the next thing that could be permitted is a crawlspace. He asks why crawlspaces could not be incorporated, and then we would not have to worry about this to begin with. He states if it is problematic, and by that he means that it is an engineering problem and not more costly, then when you do a slab they would like to have some considerations given. He shows photographs of another Lennar community and points out that the slope from sidewalk to entrance step is typically greater for homes with basements than for homes with slabs. He states that in this community that is the subject of the photographs, every home had at least two steps up into the home. He asks that the height of the main floor on Lots 52 and 53 be consistent with the height of the main floor of the surrounding homes.

Mr. Mac Innis asks if the appellant is suggesting the slabs raised six inches so that there are two steps. Mr. Redding answers that it would make the appearance more consistent with the community. Mr. Hanlon asks if the appellant has approached the builder. Mr. Redding states that he has not, and they have not come to the HOA. Mr. Burtner states that the Board has not been brought here to designing houses. Mr. Field echoes. Mr. Hanlon states they are the homeowners and they are entitled to their opinion. Mr. Burtner states that this is not the charge that is being made. He states they are asserting that staff went above their authority to do this. Mr. Redding states if they had come to talk them ahead of time he doesn't believe that any of them would be here tonight. He states they did not reach out to him, and he didn't even think to reach out to them when he heard this rumor. Mr. McNulty asks if essentially the things that Mr. Redding are asking for do not have anything to do with the Board's consideration. He states to him he thinks they are saying that the process went wrong with the administrator. Mr. Redding states he has documented proof the process went wrong. Mr. Hanlon states his impression that the appellant is taking this action to bring attention to what's happening. He suggests that the appellant and developer meet to discuss a resolution. Mr. Field states that this is not a decision that the Board has authority to make. He notes that he has a hard time believing that the addition of a large step as opposed to a large step is going to leave them damaged and financially disadvantaged. Mr. Redding interjects that hopefully the Board is here to protect community homeowners. Mr. Redding reiterates his desire that the builder consider some changes that will result in the homes on Lots 52 and 53 being visually commensurate with the other homes in the neighborhood. He states he knows that she has the right to interpret. Mr. Hanlon states they are asking for a bone. Mr. Field states he doesn't believe that they have the power to give it to them.

Mr. Field closes the public hearing.

Mr. Burtner observes that the Plan Commission has granted this same type of approval for other builders because of the very same groundwater issue.

Mr. McNulty asks whether, from an administrative standpoint, a step was missed. Mr. Howard responds that the Director's determination was not recorded because, before that was done, the appeal of the decision was filed. He states the recording will occur, and from a title standpoint you don't want to record something that isn't going to be final. He states that is the only thing that he heard that they missed a step. He adds that who did what when is not a basis because the ordinance is not very clear on how the process should work. He states it is clear that they go their appeal and they surely got their day in court. Ms. Reed states that this is the first Minor Change filed in ten years and, because it doesn't happen regularly, it may appear as if the process is not well known. Mr. McNulty states his belief that the justification for the Director's determination was not wrong, but returns to the question of correct process having been followed. Mr. Unger states that the Director's determination has not been recorded, because there's nothing to record here, we're not amending any standards, we're just allowing the slabs on two lots. He states they filed an application, the application went through the department, the department approved the application, and they have their opportunity for an appeal.

Motion by Mr. McNulty, seconded by Mr. Burtner, to deny the appeal and affirm the determination of the Director.

AYE: Burtner, Field, Hanlon, Mac Innis, McNulty. The motion carries by a vote of 5-0.

ADJOURNMENT

The meeting is adjourned at 7:27 p.m.

Mike Field, Chairman

Sarah Reed, Secretary