

The **Noblesville Board of Zoning Appeals** met on Monday, October 7, 2024. Members in attendance were as follows:

- Mike Field Chairman
- Dave Burtner Vice-Chairman
- Dan MacInnis..... Citizen Member
- Kevin Sears Citizen Member
- Lauren Wahl Citizen Member

Others in attendance included Principal Planner Denise Aschleman, Senior Planner Amy Steffens, Associate Planner Rina Neeley, and Attorney Jonathan Hughes.

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

APPROVAL OF MINUTES

Ms. Aschleman states there are no minutes ready for approval.

APPROVAL OF FINDINGS OF FACT

Motion by Mr. Burtner, seconded by Mr. MacInnis, to approve the Findings of Fact as presented.

AYE: Burtner, Field, MacInnis, Sears. ABSTAIN: Wahl The motion carries 4-0-1.

NEW BUSINESS

1. BZNA 0156-2024	
Location:	5154 Gateway Avenue
Applicant:	Alese & Charles O'Donnell
Description:	UDO § 9.B.4.E Board to consider a Variance of Development Standards application to allow a fence within the front yard setback to exceed the maximum height required (4 feet allowed, 6 feet requested)
Staff Contact:	Rina Neeley

Mrs. Rina Neeley states the subject site is located at the northeast corner of Gateway Avenue and Bearsdale Way in the Pine Knoll neighborhood. The petitioners, Elise and Charles O'Donnell, applied for a fence permit in June 2024 and were notified that their proposed 6 foot white vinyl fence would be located within a front yard and would be limited to four feet. Since this is a corner lot, there are two front yards to the property along both Gateway Avenue and Bearsdale Way. These are 30 foot front yard setbacks. The proposed fence would create an enclosed area at the rear of their house creating an enclosed space for their dog and their small children. The proposed privacy fence is not anticipated to obstruct the visibility of traffic at the intersection of Gateway Avenue and Bearsdale Way as shown here. There are other existing 6 foot fences within the Pine Knoll neighborhood that are located within the front yard setback. Shown on that exhibit, they are the highlighted areas. The applicant also included photos to the exhibit showing the fences. While the proposed 6 foot privacy fence exceeds the maximum height allowed within the front yard, it will be at the rear of the house and approximately 11 to 12 feet from the property line property line along Bearsdale Way. The proposed fence is consistent with the existing 6 foot fences in the neighborhood, and staff recommends approval with the conditions listed.

Mr. Burtner asks about the other fences. Did they go through this process, or they did just install them.

Mrs. Neeley states they were fences that were either installed prior to 2008, when we required a fence permit or they were installed between 2008 and probably 2020 without a permit.

Mr. Field asks is the petitioner present. If you could step forward and say your name or state your name and address please.

Mr. Charles O'Donnell, 5154 Gateway Avenue.

Mr. Field states staff has recommended approval of this variance with three specific conditions. Do you have any problem with complying with those.

Mr. O'Donnell states no.

Chairman Field opened the public hearing; seeing no one, Chairman Field closed the public hearing.

Motion by Mr. Burtner, second by Mrs. Wahl to approve application BZNA-0156-2024 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;
- 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
- 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.

With the following specific conditions:

1. A 6-foot-tall fence may be located within the front yard on the west side of the property, along Bearsdale Drive. Any portion of the fence located within the front yard on the south side of the property, along Gateway Drive, is subject to the regulations of the Unified Development Ordinance. An approved fence permit is required prior to the installation of a fence.
2. 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.
3. 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: Field, MacInnis, Sears. NAY: Burtner, Wahl. The motion carries 3-2.

2. BZNA-0162-2024	
Location:	10632 Pleasant Street
Applicant:	Pleasant Street Contractors Garage LLC
Description:	UDO § 8.D.1.D Board to consider a Conditional Use application to permit Mini Storage Warehouse in an I-1 (Light Industrial) zoning district.
Staff Contact:	Denise Aschleman

Ms. Denise Aschleman states this property is located on the north side of Pleasant Street approximately 700 feet west of Union Chapel Road. The site is on the westernmost boundary of the TNT Effing subdivision and is zoned I-1 Light Industrial. The rest of that Pleasant Street corridor is covered by two separate planned development ordinances, the Metro Enterprise Park and the Pleasant Street Commercial Park. The proposed conditional use is a facility that includes smaller units with a man door and an overhead door that caters primarily to contractors and tradesmen that need space to store their supplies and materials that don't necessarily need office space or other amenities that a lot of other leasable warehousing spaces include. This use has become more prevalent within this area within the last few years, and I think you all are aware that the Rise facility on Sheridan Road was built primarily for this purpose and several of the other mini storage warehouse facilities were not designed for this, but they're leasing in the same fashion, including the Hague Road Storage. Looking at the use chart the staff would classify this as mini storage warehouse based on the definition. Because it is mini storage warehouse it requires approval of a conditional use. The project was submitted for review at the June 2024 TAC meeting. A full review of the plan set submitted was completed at that time, but those plans are actually different than what was shown to you. Those plans relied on a second driveway cut that we have an agreement that says that driveway needed to be removed so they had to go back and redesign the site. This is the new layout after that redesign and it includes 3 buildings, a single access drive and uses the shared access to all three lots within that TNT Effing subdivision to get onto Pleasant Street. One of the things I do want to note we have not reviewed the resubmission for compliance with the ordinance, just a real cursory look at this. These parking spaces are located within the required 20 foot set back from Pleasant Street. Also, there's very likely an issue complying with the building base landscape requirements. As we noted before, this use has become more prevalent over the last few years, but the regulations have not necessarily been adjusted to accommodate for that change of use from the typical mini warehouse storage facility. The primary point where the ordinance is deficient is actually parking requirements. The parking requirement is 1 space per 50 storage units and then one space for every 300 square feet of office. This facility has 39 rentable units, no office so under that requirement be required one parking space. One of the primary concerns staff has with this site is specifically the parking. Pleasant Street does not allow any on street parking at all and also they're using a shared access drive, so anywhere you can find a space effects other property owners within that same subdivision. Experience shows that other users that do similar leasing actually provide a significant amount more parking than is shown on this facility. The applicant stated that they usually see parking in front of the man doors so you'd have one

space per unit. Even small shops, they could have two to three employees that may be driving to the site and then they're leaving in a company vehicle, so we believe even that one space per unit is probably under parking the whole facility. At a minimum, we would think there would need to be at least two spaces per unit and that would not include the space that is inside the man door. So they couldn't say you can park inside the unit, that's one space and then one space next to the man door. One of the things in the TAC letter also requested was color architectural drawings. The architecture that was submitted by the applicant is an example. It includes a three foot four inch stone knee wall and then the rest of it appears to be standing seam metal siding. None of the other users within that park have standing seam metal on the front facade. She shows photos of buildings within the area and as an example, this is an insulated metal panel, so it has a smoother look to it and then CMU or masonry product as a first floor. That is pretty standard throughout this corridor including this new project that's being developed here. Based upon the architecture of the building submitted and what we believe to be a parking deficiency staff is actually recommending denial of the requested conditional use. If you should choose to approve the project, we have included conditions of approval on page 5.

Mr. Field asks does anyone on the on the board have any questions for Ms. Aschleman at this time.

Mr. Sears states this could be a question for the petitioner, but the primary use of this would be for, say, contractors to access that like there's really no other long term storage that people wouldn't have to use more than one parking spot, I guess is maybe my question.

Ms. Aschleman states one other thing she do wants to point out, they will need to provide a dumpster enclosure on the property.

Mr. Burtner asks where are some other locations within city.

Ms. Aschleman states Rise on Sheridan Road. Hague Road Storage. That one has kind of morphed into contractors renting space. If you drive through there during the day there are not only contractors, but there are also people that are like doing welding and all kinds of things within a unit so they're not even leaving the site there. They are just there. Most of the like Public Storage and Extra Space Storage, they are not marketing to that group. They're getting the person that doesn't have room in their garage anymore. So the ones that are doing contractors specific marketing to that group and they're accommodating that way. Rise in particular has a model where they provide conference room space if you need to borrow it or restrooms and that kind of thing all over the facility.

Mr. Burtner asks if parking is an issue there.

Ms. Aschleman states no, they have quite a bit of parking. I printed off an aerial to bring up with me and I actually forgot to bring it with me. A tablet is used to show the aerial photograph of Rise. You can see that there's a whole row of parking here. There's different pockets of parking scattered throughout, and they're still parking, not in marked spaces along the South boundary.

Mr. Field asks if there are restroom facilities provided.

Ms. Aschleman states in terms of the restrooms, Mr. Field, it appears from the architecturals it looks like they may have a single restroom that's provided for the entire facility.

Mr. Field asks is the petitioner present. If you would like to come forward, state your name and address for the record.

Mr. Matt Obras, 10632 Pleasant Street, states he was gonna give you a copy of stuff.

Mr. Field states you need to give a copy of that to Ms. Aschleman so she can put it in as an Exhibit.

Mr. Obras states like she was saying, as you can tell, this is, you know, this is a need of the local business because of the pace of growth of businesses. And so we look at this more not just of mini storage but as a hub for these small businesses because small businesses grow into medium businesses, which grow into large businesses potentially and need more infrastructure, more space, more buildings. So again, that's why we're trying to create space, because we've been there as small business owners ourselves. If we kinda go back and retrace the history, you know, we initially reached out to the city on October 19th of 2023, so almost a year ago inquiring about this property type before we came under contract with it, we showed the same video. A similar site plan from other facilities that we have, and the feedback was based on the UDO that this would be a contractor's office and these were permitted in the area, so we had verbal approval of this a year ago. Understand that's not official until we go through the process, but based on this direction, we proceeded with raising capital. We have 8 local investors that put up capital to purchase this property. They're all residents around Hamilton County and they're very excited about this project. As she's talked about the property it's currently just a blank slate. It's a farm field with overgrown weeds for better intent right now. We proceeded with purchasing the property. We invested money into site engineering, into some

architecture. Under the proposed guidance from the city from March through June this year, we worked through the planning process, presented at TAC like she mentioned. We have multiple interactions with the city about the layout. We have since gone back and revised it from the TAC meeting, she showed, and we've been working through some of the parking issues and questions and at that time, that's when the tone changed, and the message was this has to go through BZA which again was a surprise to us and I think you know it might have been brought up because of the parking questions that were being asked. Is it mini warehouse. Is it storage. Where do we need to follow the parking, but regardless, we thought we were, you know, close to 80-90% compliant, close to being there, and so here we are. We've kind of talked through some of the facts of finding, but I want to review a couple of the comments that were, you know, raised by the staff. On the comparable sites point of view, if you look at Slide 6, this is a site. We have eight of these throughout the Kansas City area looking to expand, you know here in the Indianapolis area, and so this one is one that I think really represents well what this could look like. You see landscaping around the front, and so this one is one that I think really represents well what this could look like. You see landscaping around, there's awnings, we do have brick and masonry facade on it as well as some metal, but again this is a site that has shown that we can meet those standards and we're not trying to go around any architectural or design standards. Another one is just opened up recently. This once again, we have architectural fencing. We're not looking to put up chain link fence along the front or anything like that. Landscaping again. All complying to the local city guidelines. A couple of the comments that that we saw seem to be a bit selective in the buildings around that area, and so I wanted to at least point those out. There were multiple buildings that do have quite a bit of metal, and again, our observation shows that these have a combination of masonry and metal on them. So if you look at again, these are all places that we had to send our notification letters to for this meeting. They're within, you know, that close proximity.

Ms. Aschleman asks if she can make a quick point. There's a difference between things that are on the cul-de-sac, like Roudebush Grading, and things that are on Pleasant Street in terms of architectural requirements.

Mr. Obras states again, not trying to go around that. I'm just trying to show with people we had to reach out to that are in close proximity. There again, this Roudebush is highly metal on the side with again a brick three to four foot bottom. Page 10 you can see the side of watermark. It has a brick front all metal with overhead doors on the side of it. Similarly the other side of Watermark has, again it's hard to see from this, you can see it's all metal on that side. Master Steel is right on the corner, visible from Pleasant Street as well. They break up the up the side metal at the top. They do have some screening and fencing alongside, along with the landscaping, and again on page 13 and 14. You can see that galore. Again, has quite a bit of metal and brick. And again, it's at the on one of the other cul-de-sac streets you can see that again, very industrial atmosphere setting. Getting that metal brick look with open to overhead doors and kind of that industrial area. So again, this is just to point out another perspective of how we were approaching it again, up until receiving this feedback Friday at 5:02 PM. Didn't have any feedback from the city, which was a little, you know, disappointing over the last 6 to 8 weeks since we said, hey, you need to go to the BZA. It was a surprise to us, but again, the point that I want to make in addressing these is, you know, there's a couple issues they brought up to the items of parking. You know, based on our experience from these eight other sites that we have, this is a very common layout that you saw that we have. We have not seen any operational issues related parking. As with all of our facilities, we'll have a property manager that is on site daily. They are to ensure our tenants are complying with the lease agreements with the guidelines that are defined, and we also have surveillance on site 24/7 through video cameras. So you know, in summary, meeting the City Building standards is not something we're trying to work around. This is something that we've been trying to get feedback on and guidance on. We're here to get clear direction so we can seek approval with, you know, moving forward with our plan business type on this property. It's a project we feel very positive in bringing be bringing opportunity to homeowners that are within the City of Noblesville. Building, you know, the strong, the strong commitment the Community has to environmental and Community standards. So to answer a question that I think you brought up about restrooms, we do have a planned restroom on this. Would be a shared one throughout the facility.

Mr. Field asks shared restroom for the facility.

Mr. Obras states yes.

Ms. Aschleman asks can she just address 2 points. Verbal approval was he was allowed to go ahead and file. Take it for what it is. They had a prefilling meeting. They met with Joyceann. They were told they could file. Secondly, the architectural drawings. He's saying he's not getting feedback. The drawings were originally requested at the June TAC. They were again requested on 9/10. He provided them on Tuesday last week on the 1st.

Mr. Obras states he did forget to address that point. We admittedly had not got to the full architectural drawings because we were trying to define the site layout until we had the layout. We didn't want to spend the money going to the architects to have them do two or three times. Already invested \$50, \$60 \$70,000 in site engineering and civil work, so we were trying to get direction on where the site needed to be, but again we have no problem hitting the standards and you know the guidelines that the city has.

Mr. Field states this item is before us for public hearing. If anyone would like to speak for or against this item, please step forward.

Mr. Kevin Steely, Terrasite Development, states he is working for Matt in this case, but he would like to speak in favor

Mr. Field asks could you state your business address please.

Mr. Steely, 1307 W 161st Street in Westfield IN 46074. I was at the TAC meeting in June to hear firsthand the comments that were made on the previous version. I think Denise has already pointed out what's in your packet is not what they saw. We acknowledge that. So we were trying, as she stated, between June and now, we tried to address a few of those site items but did not address all of the ones that are listed in your packet. I would simply love to look at page five with you of your packet that says if you were to approve this project. Having worked with our landscaper, I believe that we can meet that baseline skating in the front and back of the building and agree wholeheartedly a variance would be required for the sides where the doors are. If you choose to approve this conditional use that makes sense. As far as the parking spaces being pulled back, one of the things unfortunately, we did not get into your packet. We did a preliminary layout to see if the whole site could be moved so that we could get out of that 20 foot easement. The answer was yes, we could pull it out of that buffer. We did not provide that to the city in time for this packet. So I have every confidence that that can be done as far as meeting the minimum of the two parking spaces per unit. We can do that as well along that frontage. Again, I see both of those being met. I think Matt has already addressed #4 as far as being willing to meet. Textual requirements and he's addressed many of those himself. Ms. Aschleman mentioned the dumpster, and I know we can accommodate that as well and get it screened correctly the way Noblesville likes to see those screened and drained, etcetera. So I have every confidence we can accomplish that. In talking with Matt just before the meeting, with number six about fencing, it was never our intent to put a black chain link fence. He would really like a decorative fence, which I think is acknowledged in this comment. But we acknowledge this remark that that it will be a decorative fence or wall, which in our case we'd want a decorative fence. In #7, I think that again is something for contractor garages to really deal with. As far as the acknowledgment and then #8 any changes to site plan that's on me. And we understand that we would have to go back through the process we reviewed again by TAC to make sure that we're compliant with those requirements. Thank you for letting me address that.

Chairperson Field asks is there anyone else would like to speak on this item. Seeing none, he closes the public hearing.

Mr. Field states this is just too far for our board. The building facade does not meet requirements. There are numerous areas where this does not meet City ordinances and asking us to provide a variance without having drawings without having a final plan without having things that show how you're going to meet these things is basically asking us to rewrite the UDO. That's not in our pay grade. That's my opinion.

Mrs. Wahl states I would agree. I think the site and the architecture truly falls flat. But I think the question here is the conditional use, right. Classifying this as a mini storage facility. I'm also concerned about the lack of facilities. I don't think that one shared restroom for all of these units is adequate, and I think it may lead to issues in the future. But we don't want on Pleasant Street which is an entrance to the community. I don't think we want Porta Potties sitting out there. Are there typical hours of operation for your contractors.

Mr. Obras states the typical like 7:00 to 5:00 for, yeah. What we've typically seen is that contractors will arrive anywhere between 6:00 and 8:00 in the morning to either load materials, unload materials, they'll go to a job site, they'll go out and work, and they'll come back and maybe unload, transfer, stock up for the next day and return home so.

Mr. Sears asks is there any caveat to somebody like welding within a unit as we're seeing in Rise. I think that might be a concern being more all day operation and the lack of facilities there.

Mr. Obras states we do not allow hazardous materials. Don't allow any operation that is going to be of high voltage. That's written into our contracts and so that's what we're there to enforce as a management.

Mr. Sears asks when the gentleman was going over the should we approve with recommendations requirements and made the point that design could come back and accommodate item numbers. Is that still an option on the table. Should it be.

Mr. Hughes states he thinks if you are going to continue this to allow them to address that stuff, they need to address not only the site plan information, the architectural information as well.

Mr. Sears states he has a little bit of soft spot here, just cause my father-in-law operates out of one of these right outside of Louisville. So I do have a soft spot for the comment that was made that small business, especially in the construction world, it can be a barrier a little bit. So you did your own way with the electric, but I do know that this is a situation that does exist. With that being said I think I agree that without further documentation and addressing in writing of these items it is difficult to approve.

Mr. Hughes states so what is before you tonight is whether this is the right use in this location. That's basically what you're being asked to look at. So just keep in mind that that staff's report from this perspective is a recommendation based on looking at this location and the information we have we don't believe this is the right use. I don't think it's staff saying or the city's saying this isn't a use that makes sense just not in this location is what the city's saying. To go back to an earlier question, what other options are out there. Are there alternative locations that would be allowed to run in here.

Ms. Aschleman states unfortunately she is not a site selector. I'm sure there is plenty of real estate available, but that's one of the things that's not a service of the department.

Mr. Hughes states one comment I would like to make to them is that mini storage is a conditional approval everywhere in Noblesville. Everything that's considered mini storage has to come through here. Just to put one more final point on the legal basis, what staff is saying with respect to this particular one. Why they're not in favor of this particular conditional use is because it's not harmonious, which is condition number three of the conditional use with the area in which it's located. Staff is saying is looking at the holistic of what we looked at and it is not the right use for this location on Pleasant Street. Doesn't mean if they apply for another mini barn storage in another part of the city, we wouldn't say this is harmonious, similar to the way the Rise district. Just to be clear, this is not a no to mini storage everywhere, this is just you're being asked, given the specific facts, does it make sense in this specific location.

Motion by Mr. Field, second by Mr. Burtner to deny application BZNA-0162-2024 based upon findings of fact #3:

- **The proposed Conditional Use has not been designed so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and could change the essential character of the area.**

AYE: Burtner, Field, MacInnis, Wahl. NAY: Sears. The motion carries 4-1.

3. BZNA-0167-2024	
Location:	12141 Cordelia Avenue
Applicant:	OP Marea LLC
Description:	UDO § 12.0.7.C Board to consider a Variance of Development Standards application to allow a 6-foot-tall privacy fence to be located in the northern landscape buffer yard
Staff Contact:	Amy Steffens

Mrs. Amy Steffens states she would like to apologize in advance because she will continue to call this Maria instead of Marea. We are dealing with a variance of development standards to the Marea Community, which is at Campus Parkway and Marilyn Road. It's 20 acres in total. What the applicant is asking for is a variance of development standards to locate a fence along the north property line. That property line is shared with a multi-family apartment complex to the north. The Marea planned development ordinance required a 30 foot landscape buffer yard essentially around the perimeter of the 20 acres, so 30 foot perimeter landscape perimeter yard along that north boundary. The applicant earlier in the year applied to install a six foot fence and it was noted at that time when staff, Brett Willaman, our new planner, was looking at it that a portion of the fence was located in that 30 foot buffer yard. In our landscaping standards, Article 12 says that fence cannot be located in that landscape yard. There's to be nothing in there except landscaping. Mr. Willaman and I went out and took a look at the site at the time and we took some pictures, and I know he put them into his staff report. It appears that the fence location is designed to avoid some mature trees and landscaping that is acting as a natural buffer between Marea to the south and then the multifamily to the north. It should be noted that not the entire fence is going to be located in that landscaping buffer yard about 405 linear feet will be pulled into that buffer yard by three feet. The remainder of the fence, the fence that is immediately adjacent to Marilyn Road will be on the property line, as will the portion on the west side of the of the lot.

Mr. Field asks what was the purpose of the buffer yard. Why did the city ask for that buffer yard.

Mrs. Steffens states the buffer yard is a requirement in all development. The buffer yard is intended to provide a landscape area. There are certain landscape standards depending on what is adjacent to you as to the amount of trees and shrubs that you're to have, but that landscape buffer yard is just to ensure an open vista and open space between developments. Depending on where you're developing the width of the buffer yard may vary. Here it's 30 feet. In other PDS it's 50 feet. It just depends on the zone.

Ms. Aschleman states all PDs require 50 foot buffer yard. Unless they ask to waive it or reduce it. In this instance, they asked to reduce it to 30. The standard says it shall be free of all kinds of improvements, including a fence,

unless they specifically ask for the fence during the PD process.

Mr. Burtner states so it's an aesthetic thing. It's not for a practical reason. There's not utilities running through there, or fire access or anything like that.

Ms. Aschleman states there may be utilities adjacent, but landscaping and utilities do not generally mix, so those areas are usually defined separately.

Mrs. Steffens states there is a fire access lane between the two developments. One of the conditions of project approval should the board decide to approve it, is that there will be no fence or obstruction. There is a gate there, however, with a Knox box. There's to be no fence installation in that designated fire lane. You'll see that staff is recommending approval again because we recognize that the location of the fence within that buffer yard is maintaining the mature trees that are there. This is Mr. Willaman's project, who is not here today, so I am doing the presentation for him. As I was reading through the staff reports, exhibits that I had not seen previously, there is a report in there from an arborist and it is dated September 18th of this year. It's exhibit five. Staff would recommend also that if the board moved to approve the variance request that you add a condition that the arborist recommendations for pruning of trees for timing of pruning be followed.

Mr. Rick Lawrence, Nelson and Frankenberger, 550 Congressional Boulevard. Staff did a really good job in their presentation, but also the staff report explaining the situation, providing a suggested findings to fact this boils down to, as staff had said, we want to move a portion of the fence 3 feet into the buffer to avoid impacting mature trees. It was based on a recommendation from an arborist based on recommendation from staff. We're just trying to get the fence in a position where we're not damaging what's already there and we're OK with all the conditions, including the most recent one that staff suggested.

Chairman Field opened the public hearing; seeing no one, Chairman Field closed the public hearing.

Motion by Mr. Sears, second by Mrs. Wahl to approve application BZNA-0167-2024 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;**
- **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**
- **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.**

With the following specific conditions:

1. 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.
2. 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.
3. No fence or other obstruction shall be installed in the designated fire lane.
4. The arborist recommendations for timing of pruning trees be followed.

AYE: Burtner, Field, MacInnis, Sears, Wahl. The motion carries 5-0.

4. BZNA-0169-2024

Location:	11294 Golden Bear Way
Applicant:	Troy Terew, True North
Description:	UDO § Table 8.B Board to consider a Variance of Development Standards application to allow for maximum lot coverage to exceed 45 percent within the R1/PD zoning district
Staff Contact:	Amy Steffens

Mrs. Steffens states before you is another variance of development standards application for maximum lot coverage. We have had a couple of these lately. The subject site is under construction. A 0.27 acre parcel in the Sagamore Plan development. Dwellings abut to the north and the south and east adjacent parcels are vacant or improved, with single family dwellings, and then to the west is a golf course. In June 2024, the applicant applied to construct a 5,120 square foot dwelling that includes the basement and an in ground pool. As I was reviewing the permit application, I noted that the maximum lot coverage would exceed the 45% permitted by the UDO. The permit for the dwelling and driveway was

issued on July 11, 2024, and the lot coverage regulations were indicated on the approved plot plan which I included in your staff report as exhibit D. You also see on the second page of the staff report, table one includes all the lot coverage calculations. Lot coverage is capped at 45% of the square footage of the lot, and what we count is anything that is covered. The house detached accessory structure, a lean-to, a shed, plus any impervious surfaces, and that would include gravel, which they're not proposing here, but gravel because of the way it compacts, and any hardscape. The pool permit application was submitted and by the time you calculate the dwelling, the driveway, which is already permitted, the private walk and the pool deck, we come out to 64% lot coverage. Again, 45% is permitted. We do not count the surface of the pool in lot coverage. You'll notice that staff is recommending denial of this request, and I will quickly walk through our findings of fact. Finding #1 applicant's own application indicate that the Sagamore Golf course has several acres of unimproved land to the rear of the slot to accommodate any additional water runoff. No information has been submitted by the applicant, however, to show that adjacent residential properties will or will not have to also accommodate additional run off. Overall, Sagamore development was designed at 45% maximum lot coverage and it's these incremental increases in impervious area that may have an adverse effect on adjacent properties and potentially the subdivision variance approval for lot coverage in excess of 45% is not the only remedy at property owner's disposal and develop for single family residential uses. A lesser variance request could be approved by the board. The use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner by allowing the requested variance hardscape on nearly 2/3 of a site is not traditionally seen in a residential setting. Nearby property owners may remonstrate against this petition, however, if they believe this request will impact them. You'll note that I gave you 2 letters of support supplied by the applicant via e-mail. Again, I pass those out and the Sagamore Homeowner Association did approve the plot plan, showing the original application, which is an exhibit D for the pool and the deck. The strict application of the terms of the zoning ordinance will not result in practical difficulties in the use of the property. There is no unique physical condition of the property that does not apply to other properties in the same zone or vicinity. Yes, this is a smaller lot than say, the lot to the northwest, however, the same 45% lot coverage applies to all lots in this area. Property rights would not be hindered by compliance with the standards of the UDO, as evidenced by the fact that adjacent lots are developed in compliance with the UDO. The excessive lot coverage is a personal preference based on design. It's self-created and is not a practical difficulty or unique condition of the property itself. Additionally, you'll see that there are standards that the that the board should consider when deliberating on approval or not of a development standard; hardship, unique physical conditions, not self-created, denied substantial rights, is it merely a special privilege or no other remedy. The pool permit could be issued with a lesser variance should the board decide to increase or allow an increase in lot coverage over 45% but a lesser lot coverage than what is being requested. You'll note that when the board deliberated on the Pennycrest variance, I believe that was even last month, they asked for lot coverage in excess of 45%, I believe they were at 53% and it was a very small lip or pool deck around that pool. The board found that to be a reasonable compromise and a reasonable deviation from the ordinance. With that, I'm happy to answer any questions that you may have.

Mr. Field asks is the petitioner present. Could you step forward and state your name and business address for the for the record please.

Mr. Troy Terew, True North, 11650 Olio Road, Suite 1000, states he is here representing the property owners Wilmoth's and the builder Joe Logan. We are here today requesting a variance of lot cover hardscape lot coverage. Of 64% as calculated over the 45% specified by the UDO, there is a question of whether or not the UDO. There was mention that this was designed to the UDO standards, so though this was designed to apud back in early 2000 and it did not address lock coverage, I don't think the based on my experience working in Sagamore lot coverage was not a consideration of design of those lots. I'm going address the points 1 by 1. Run off the plot plan shows that runoff at this lot runs directly back or to the rear of the lot on to the golf course you can see on the aerials that there is also a ditch line that would also collect the runoff shortly after entering the golf course. The golf course itself is in support of this design. Both immediate neighbors are in support of the design. The ARB has accepted the design they're not in denial of it. The HOA has accepted design. Using the three items. It was mentioned that this was designed to the UDO standards and I objectives designed PUD standards. There was some interpretation whether or not because of it, because the lot coverage, the interpretation of double is because of lot coverage was not specified in the PUD that the UDO should automatically kick in for lot coverage. The question of use and value that's going to be adverse to the adjoiners, I would say that possibly the opposite is true, not being able to develop a very highly sought after outdoor living area which is very common place could adversely affect the adjoiners property values. Unique hardship that this is not a unique subdivision, it's Sagamore. It is absolutely a unique subdivision. It is a very specific subdivision with lots that border up against the golf course that have all kinds of unique architecture, mainly a lot of custom homes, lot of custom outdoor living areas and development. There's also a question of there are clearly lots out here that have already exceeded the 45% on a regular basis. Having worked in Sagamore for 20 plus years, who has platted this section was platted in 2002. This is the first time in 20 years that I've heard of the lot coverage being applied to Sagamore lots. The ARB was also surprised that lot coverage is being applied to Sagamore lots and they have sent out a notice and we have a letter saying they will forewarn future lot builders that lot coverage is being scrutinized now, so perhaps to avoid the situation unless it's determined that the PUD did in fact intentionally omit lot coverage.

Mr. Field states let me interrupt you for just one moment. He addresses Mr. Hughes. Is that true that if a PUD is silent on a point then the UDO takes back over or if the PUD is silent on a subject does it not apply to that PUD.

Mr. Hughes states in the position with respect to Sagamore, exactly as he's indicated that that was the intent that the PUD was silent on some topics, and it was only meant to amend those topics that were specifically addressed the way that the PD was drafted. That's the position we've taken. That's the position I think that's consistent with the law. We've

already applied the lot coverage in another property in Sagamore, just last meeting or the meeting before, so that's consistent with how we've handled the topic.

Mr. Field states so the city is contending that if the PUD is silent on a subject, UDO takes over.

Mr. Hughes states yes in his non legal shorthand.

Mr. Terew states you can see here is another cul-de-sac. These lots are clearly over 45% impervious coverage, some as high as 80% or higher based on just from glancing an eyeball test of some of these lots out here. We're not inconsistent with other properties that have been developed in Sagamore, and we contend that denial of this would deny them the deny them ability to enjoy their property on the golf course. Yes, one of the arguments made by Noblesville Planning is that this is a situation caused by the property owner and the builder, but I would say that their intent when they bought this was to develop it this way because other properties in the golf course community have already been developed this way. They're just being consistent.

Mr. Burtner asks when did your clients apply to the city for their building permits and all that other stuff. Those were granted correct.

Mr. Terew states the building permits were issued.

Mr. Burtner asks did the permit application show the property in the final form that you were presenting to us tonight? Was the pool on the plan. Was the driveway on the plans. Was the pool deck on the plan.

Mr. Terew states initially yes. Then we were told that we exceeded the lot coverage. And then we were told that we could seek a variance and based on precedent out in Sagamore, we believe this was a potentially successful variance. Not saying it is just based on the condition based on other joiners, other properties in Sagamore.

Mr. MacInnis asks is your client willing to say, reduce the impervious pool area, the patio that's around there to get more in line with what the city's looking for the reason. The reason they limit impervious surfaces because #1 water runoff and #2 the sewer's out there. If there's too much water running one way, it's got to go someplace.

Mr. Joe Logan, Premier Custom Homes, 7113 Bent Grass Dr, states we were unaware that there was any kind of impervious soil situation. They had several meetings with Sagamore designing the lot, got an angle on it with all of them have a 30 foot easement buffer at the back of the lot. So we drew this house and worked with Troy to make it fit, so we were surprised when Mrs. Steffens said, hey, we have a problem here, but she said you can get a building permit with the driveway, you need a driveway to get in. You can do a driveway and the house and you're at your 45%. Then you can apply for a variance we didn't really know the success rate, but we looked at other. Properties in the neighborhood that have more than our 64%. I just felt like we'd work through it and I think the answer I'm speaking for them now. We're open to ideas to lessen the number. I know there been an application here this year for one for 52 or 53 and one for 59 through the Carrington homes. I think those were approved, but there's nothing in the minutes online that I could see what percentage they were approved for, and I don't know if some jurisdictions like Fisher's and Carmel allow permeable pavers, some don't. Some count is 100% credit, some count is 50%. Credit steppingstones instead of a solid sidewalk could less, and you know, there's a lot of things. If someone if you guys or somebody just says this is what we will allow we are more than willing to work with you guys. Neighbors, the immediate neighbors, I've met with them 10 times. They're all in. The only thing they ask is that we don't block their view of the golf course with any trees or anything like that. They have six grand children so part of the backyard is for their enjoyment and that's you know what we're trying to do.

Chairman Field opened the public hearing; seeing no one, Chairman Field closed the public hearing.

Mr. Field says please remind me what would be allowed that is part of the calculation. I think there was like stairs and they talked about permeable pavers. I think on the last yeah, the last one. The problem with the pervious I'm no expert but eventually it you still have the issue. He asks would the city read that some of these lots are, in fact, well over the percentage.

Mrs. Steffens states yes.

Mr. Field states there is a disconnect that's happened. There's a disconnect. Is flat work something that city has actively looking at for.

Ms. Aschleman states that's just it. Our UDO currently says if they're, they were just putting in a patio, we wouldn't even see it because we do not require a permit for it. We're looking into amending that, but at the moment, correct flat work does not require a permit.

Mr. Field states just by looking at the aerial that those were approved with additional lot coverage, and just it's a reoccurring thing and it's happening to us. Is this the third one we've had in the Sagamore area in this year.

Mrs. Steffens states yeah, this year.

Mr. Field states it might also be that some of the lots that we're looking at are smaller as like the lot next to it, much larger lot is the smaller 1/8. Based upon the fact that the only reason we're reviewing this is because there's a hole in the flat work that has a pool in it.

Mrs. Steffens asks if you could please include the standard 2 conditions of approval, acknowledgement of variance being signed within 60 days, and any changes having to come back to the board please.

Motion by Mr. Field, second by Mr. Sears to approve application BZNA-0169-2024 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;
- 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
- 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.

With the following specific conditions:

1. 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.
2. 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, Field, MacInnis, Sears, Wahl. The motion carries 5-0.

MISCELLANEOUS

ADJOURNMENT

The meeting is adjourned at 7:11 p.m.

Mike Field, Chairman

Caleb P. Gutshall, Secretary