

ORDINANCE NO. 01-02-18

AN ORDINANCE OF THE CITY OF NOBLESVILLE, HAMILTON COUNTY, INDIANA CONCERNING AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE AND ORDINANCE NO. 22-03-

16

Document Cross-Reference No: 2003-120613

This is an Ordinance to amend the Unified Development Ordinance of the City of Noblesville, Hamilton County, Indiana No. 62-12-95 (the "Unified Development Ordinance") and Ordinance No. 22-03-16, and all amendments thereto for the City of Noblesville, Hamilton County, Indiana, enacted by the City of Noblesville under authority of Chapter 174 of the Acts of the Indiana General Assembly 1947, as amended.

WHEREAS, Ordinance No. 22-03-16, (the "Broccoli Bill's Planned Development Ordinance"), was enacted on April 12, 2016; and,

WHEREAS, the Advisory Plan Commission of the City of Noblesville (the "Commission") has conducted a public hearing on Application No. 0183-2017 as required by law concerning the adoption of a text amendment to the Broccoli Bill's Planned Development Ordinance; and,

WHEREAS, the Commission forwarded Application No. 0183-2017 to the Common Council of the City of Noblesville, Hamilton County, Indiana (the "Common Council") with a favorable recommendation with a vote of 10 AYES and 0 NAYS at their

Jan. 16, 2018 meeting.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the City of Noblesville, Hamilton County, Indiana, meeting in regular session, that the Unified Development Ordinance, and the Broccoli Bill's Planned Development Ordinance, and all amendments thereto are hereby amended as follows:

SECTION 1. That Section 4 of the Broccoli Bill's Planned Development ordinance be amended to add a new subsection 4.8 with the following language: *The minimum requirement for frontage on a public street shall be waived.*

SECTION 2. That residential access from Holston Hills Drive is facilitated by a March 17, 2015 agreement, represented here as Exhibit "A".

SECTION 3. This ordinance shall be in full force and effect from and upon its adoption and publication in accordance with the law. All other terms and conditions of the Broccoli Bill's Planned Development ordinance not in conflict with this Ordinance shall remain in full force and effect.

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SECTION 4. Upon motion duly made and seconded, this Ordinance was fully passed by members of the Common Council this 13th day of February, 2018.

COMMON COUNCIL OF THE CITY OF NOBLESVILLE

AYE

NAY

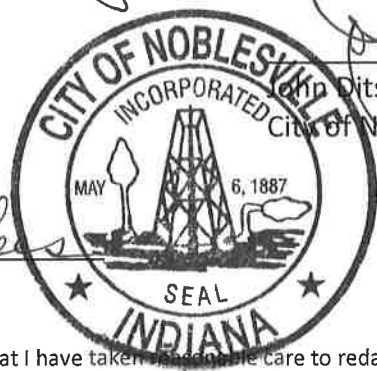
_____ Brian Ayer _____
_____ Mark Boice _____
W. Hampton _____ Wil Hampton _____
Christopher Jensen _____ Christopher Jensen _____
_____ Roy Johnson _____
Gregory P. O'Connor _____ Gregory P. O'Connor _____
Mary Sue Rowland _____ Mary Sue Rowland _____
Rick L. Taylor _____ Rick L. Taylor _____
Megan G. Wiles _____ Megan G. Wiles _____

Approved and signed by the Mayor of the City of Noblesville, Hamilton County, Indiana, this 13th day of February, 2018.

John Ditslear
John Ditslear, Mayor
City of Noblesville, Indiana

ATTEST:

Evelyn L. Lees
Evelyn L. Lees, Clerk



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

Andrew E. Wert
Printed Name of Declarant

EXHIBIT A

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Agreement") is made effective as of March 17, 2015, by and among, William P. and Carol A. Weghorst ("Weghorsts") and the Thurston Family Trust ("Trust") (collectively the Weghorsts and the Trust are referred to at times as the "Parties").

RECITALS

WHEREAS, the Weghorsts and James S. and Martha J. Thurston ("Thurstons") entered into an "Agreement to Purchase Real Estate" ("Weghorst Purchase Agreement") in which the Thurstons County, Indiana sold approximately along Gray Road 2.7 north acres of of 146prorty¹ Street located ("Weghorst in the City Property"); of Noblesville, and Hamilton

WHEREAS, subsequent to the Weghorst Purchase Agreement, the Thurstons continued to own real estate adjacent to the Weghorst Property which they subsequently transferred to the Trust; and

WHEREAS, subsequent to the Weghorst Purchase Agreement, NVR, Inc. ("NVR") and the Trust entered into an Assignable Real Estate Sales Contract ("NVR Purchase Agreement") whereby NVR agreed to purchase an approximately 55-acre parcel of land adjacent to the Weghorst Property for the purpose of developing a Ryan Homes Community ("NVR Propeny"); and

WHEREAS, the Weghorsts represent and warrant that they have not assigned, sold or otherwise transferred any rights or interests they claim under the Weghorst Purchase Agreement to any third parties; and

WHEREAS, the Weghorsts have asserted that pursuant to the terms of the Weghorst Purchase Agreement and/or other agreements (collectively "Weghorst-Thurston Agreements") they have a right of first refusal or option to purchase some or all of the NVR Property CROFR"); and

WHEREAS, the Thurstons, the Trust and NVR deny, amongst other things, (1) that the ROFR remains valid and/or enforceable, (2) that even if enforceable that the Weghorsts have satisfied the conditions precedent necessarily to exercise the ROFR and/or (3) that the Weghorsts, their assigns or any other third patties have any recognizable claims to or interests in the NVR Property; and

WHEREAS, in an effort to avoid the time, expense and uncenainties of litigating, the Parties have agreed to resolve and settle the dispute over the NVR Property and the claimed ROFR on the terms and conditions set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Parties hereby acknowledge the accuracy of the foregoing recitals and adopt the recitals as a substantive part of this Agreement.
2. Weghorsts New Home Payment. The Weghorsts will receive a payment from the Thurstons Buyer in the amount of Thirty Thousand Dollars (\$30,000) within five (5) business days of the closing of the NVR Property. This payment is intended to be used, but is not limited in use, by the Weghorsts for the construction of a new home on the Weghorst Property. The Thurstons have secured an agreement with NVR such that either NVR or the NVR Property developer will provide any necessary easements over the NVR Property for a driveway and to allow a residence constructed on the Weghorst Property to connect to new city sewer and water lines.
3. Release of the Right of First Refusal and Other Matters. The Weghorsts release and forever discharge the Thurstons, the Trust, NVR, Gradison Land Development, Inc. ("Gradison") and their respective affiliates, divisions, parent corporations, subsidiaries, groups, officers, directors, agents, attorneys, employees, representatives, beneficiaries, assigns and successors and ally other related person or entity whether specifically or generally designated (the "Released Parties"), from and against all claims, damages, injuries, losses, actions, suits, proceedings, expenses, and attorney's fees that they or anyone on their behalf have or might have, whether known or unknown, in law or equity, arising out of, involving or relating to: (1) the Weghorst-Thurston Agreements, including the claimed ROFR; (2) the Weghorst Property; and (3) the NVR Property ("the Released Claims").
4. Warranties. The Weghorsts represent and warrant:
 - i. that they have not recorded or otherwise placed of record any document purporting to represent an interest, including a ROFR, in the NVR Property. To this end, should such a recording be located, the Weghorsts agree to execute and record a document expressly confirming its release and waiver of its interests in the NVR Property and/or ROFR.
 - ii. that they have not assigned, sold or otherwise transferred any rights in the ROFR, the Weghorst Purchase Agreement and/or related to the NVR Property.
5. Weghorsts Agreement to Indemnify, Defend and Hold Harmless. The Weghorsts agree to defend, indemnify and otherwise hold the Released Parties harmless from and against all liability, claims, causes of action, damages, losses, suits, proceedings, expenses, attorney fees and costs arising out of, involving or relating to any claim related to the NVR Property based upon or deriving in any way from the claimed ROFR, interests in the Weghorst Property,

the Weghorst-Thurston Agreements, and/or a breach of the Weghorsts' warranties herein. This agreement to indemnify, hold harmless and defend applies even if the act or omission complained of was allegedly caused in whole or in part by the acts, omissions or negligence in any form of the Released Parties.

6. Other Agreements and Limited Release. The Parties acknowledge that no other promises, inducements or agreements have been made between them other than what is represented in this Agreement, All Payments by Weghorst to Thurstons and Trust for ROFR will cease.

7. Venue. This Agreement shall be governed by the laws of the State of Indiana. The exclusive venue for any subsequent litigation related to matters in the Litigation or related to this Agreement will be in a state court located in Hamilton County, Indiana, or in a federal court located within the Southern District of Indiana.

8. No Admission of Liability. Nothing contained in this Agreement shall be construed as an admission of liability by any party. Additionally, except as set forth herein, nothing in this Agreement shall be construed as a waiver of any claims, defenses or other legal positions.

9. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

10. Rules of Construction. Each of the Parties hereto has revised or requested or had the opportunity to revise or request revisions to this Agreement, therefore, any ambiguities are not to be construed against either party.

11. Attorney's Fees. If any action is required to enforce the terms of this Agreement, the prevailing party in that action shall be entitled to recover its reasonable attorney's fees incurred in enforcing the Agreement.

12. Warranties by the Parties. By signing this Agreement, each Party expressly warrants and represents that:

- a. The Party is legally competent to execute this Agreement;
- b. The signator is duly authorized to execute this Agreement;
- c. The Party has had the benefit of professional advice from its attorneys throughout the negotiation of this Agreement; and
- d. With the benefit of such professional advice, the Party has been fully informed of the contents, terms, conditions and effects of this Agreement, has read and understood this document and has had its contents fully disclosed and explained to them by their attorneys, and understand the same.

WILLIAM P. WEGHORST

William P. Weghorst

Date: 3-24-15

CAROL A. WEGHORST

Carola Weghorst

Date: March 24 15

THE THURSTON FAMILY TRUST

By: _____

Printed: _____

Date: _____



PLAN COMMISSION STAFF REPORT

ITEM NO: 2 **APPLICATION NO.** 0183-2017

MEETING DATE: January 16, 2018

SUBJECT: Amendment to an adopted planned development ordinance

PETITIONER(S): Church Church Hittle & Antrim
William Weghorst - Owner

SUMMARY: Permit a lot without frontage on a public street

LOCATION: 15009 Gray Road

WAIVERS REQUESTED: Lot without frontage on a street

RECOMMENDATION: Forward to the Common Council with a favorable recommendation

PREPARED BY: Denise Aschleman, Senior Planner
daschleman@noblesville.in.us
317-776-6325

Planning Terms

Planned Development – A large-scaled unified development consisting of a parcel or parcels of land, controlled by a single owner to be developed as a single entity. The area of land in which a variety of residential, commercial, and/or industrial uses are planned and developed as a whole according to the adopted preliminary development plans and approved detailed plans, with more flexible standards, such as lot sizes, uses and setbacks, than those restrictions that would normally apply to a specific zoning district.

Preliminary Development Plan - The initial development plans as proposed for a Planned Development following approval by the Plan Commission and adoption by the Common Council of said drawings and Planned Development (PD) ordinance including any waivers from the underlying zoning district regulations and commitments by the developer for said real property.

Text Amendment - A modification that clarifies or preserves the written provisions of an adopted ordinance or creates a new provision. It may correct an error or inconsistency or meet the challenge of changing conditions.

Procedure

The application was filed November 29, 2017 for a public hearing at the January 16, 2018 Plan Commission meeting. The Plan Commission votes on a recommendation to the Common Council for adoption, denial, or no recommendation. The Plan Commission has the authority to modify the proposal and/or attach conditions to the recommendation.

Correspondence

None.

Summary

The request is to amend the text of the original Broccoli Bill planned development. The original planned development ordinance was approved in April 2016 and set out standards to allow both the existing business use on the property as well as a proposed residential use. The original planned development ordinance went so far as to set out bulk standards for a residential lot, but there was an existing Unified Development Ordinance (UDO) regulation that was not waived. UDO 9.A.2 states that every building constructed should be done on a lot that has frontage and access on a street.

The existing Broccoli Bill location has frontage on Gray Road, but to create a lot for a residential structure there is not room to provide frontage along Gray Road for the residential lot. The owner of the lot has negotiated with the property owner to the south to allow them to have access to the residential lot from Holston Hills Drive. The Broccoli Bill lot is separated from Holston Hills Drive by a common area that is maintained by the homeowners association. The driveway has to cross that common area within the Holston Hills subdivision, and

therefore does not have frontage on the street. The common area will be used to provide a driveway and sanitary sewer access to the property.

Item	Description	Analysis
<i>Surrounding Land Uses</i>	North –Residential property and Guerin High School East – Holston Hills subdivision South – Holston Hills subdivision West – Bridgewater Marketplace	Broccoli Bills just recently completed a construction project that allowed them to expand their existing commercial operation.
<i>Comprehensive Master Plan and Future Land Use</i>	The Comprehensive Master Plan indicates this area as Mixed Density Single Family Residential	This can include a variety of single family housing varieties, but will generally have a density between two and five units per acres and should reflect nearby developments.
<i>Traffic Circulations and Thoroughfare Plan</i>	<i>Not Applicable</i>	<i>Not Applicable</i>
<i>Environmental and Utility Considerations</i>	<i>Not Applicable</i>	The property owner has made arrangements with the property owner to the south to allow them to cross a common area in the subdivision to receive access to the sanitary sewer and also to place a driveway.
<i>TAC Comments</i>	<i>Not Applicable</i>	<i>Not Applicable</i>

Fiscal Analysis

Not Applicable

Attachment

- Exhibit 1 Aerial Photograph
- Exhibit 2 Zoning Map
- Exhibit 3 Broccoli Bill Planned Development Ordinance amendment

Recommendation

Staff recommends that this petitioner be forwarded with a favorable recommendation to the City Council for adoption of the text amendment to the Broccoli Bill Planned Development Ordinance as per the submitted application 000183-2017.

Motions

1. Motion to forward this petition with a favorable recommendation to the City Council for adoption of the text amendment to the Broccoli Bill Planned Development ordinance as per submitted application 000183-2017.
2. Motion to forward this petition with an unfavorable recommendation to the City Council for adoption of the text amendment to the Broccoli Bill Planned Development ordinance as per submitted application 000183-2017. (support with reasons)
3. Motion to continue application 000183-2017 until the February 20, 2018 meeting.

Exhibit 1 Aerial Photograph



January 9, 2018

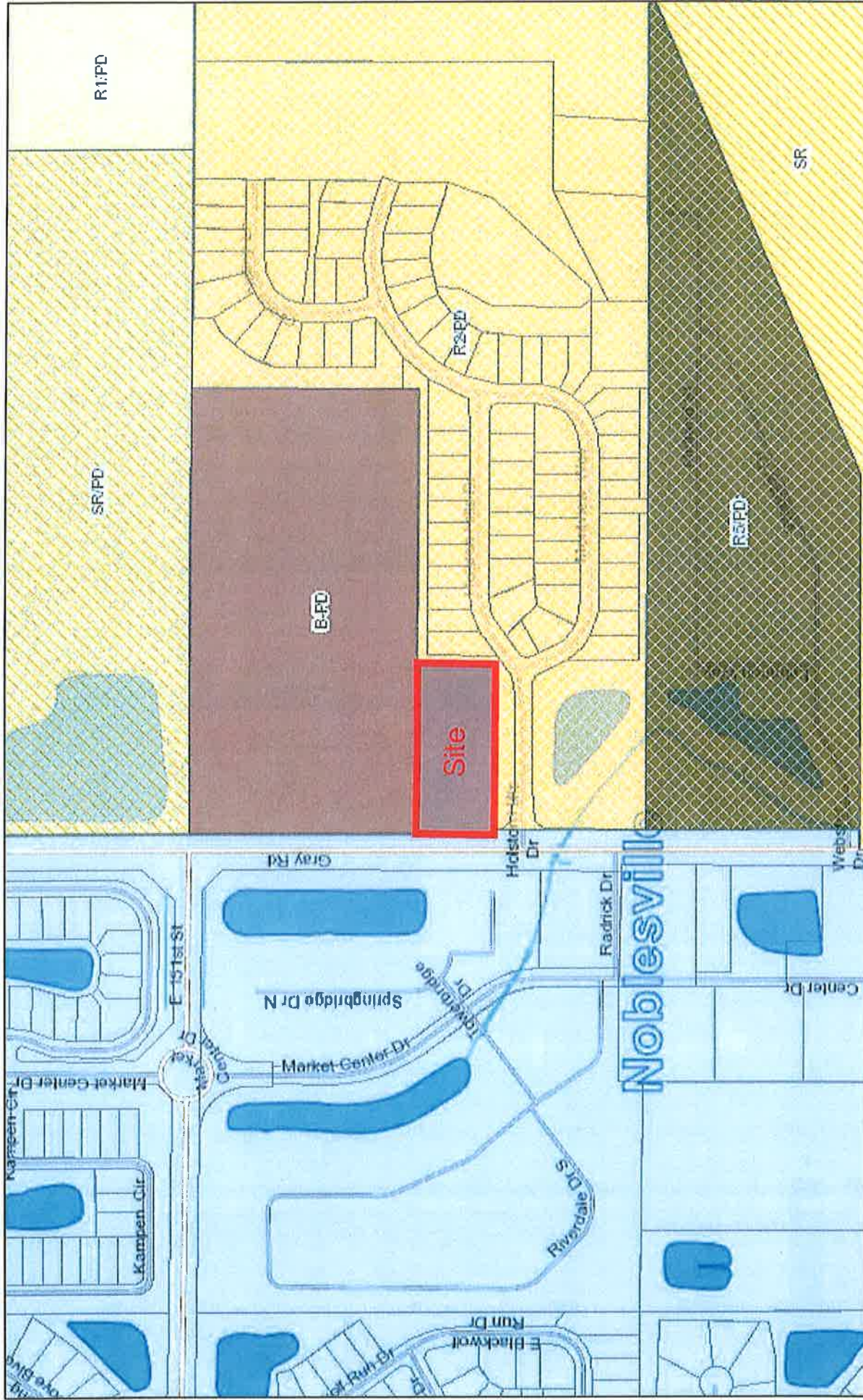
Parcels

1:4,800



Basemap information here

Exhibit 2 Zoning Map



January 9, 2018

Parcels

Noblesville Zoning Districts

FH- Flood Hazard

Flood Damage Reduction

1:4,800



Basemap information here