

**MINUTES**  
**BOARD OF ZONING APPEALS**  
**July 26, 2021**

The Warsaw Board of Zoning Appeals met for regular session on Monday, July 26, 2021 at 7:00 p.m. in the City Council Chambers, 102 S. Buffalo Street, Warsaw, Indiana. The following members were present or excused:

Present: Rick Keeven, Tammy Dalton, Dan Smith, Jeff Johnson, Jacob Ihrie (Assistant City Planner), Justin Taylor (City Director), Whitney Shilling (Recording Secretary), Scott Reust (City Attorney)

Absent: Tom Allen

**CALL TO ORDER**

Keeven called the meeting to order.

**APPROVAL OF MINUTES**

The June 28, 2021 meeting minutes were reviewed and presented for approval. Smith made a motion to approve the June 28, 2021 meeting minutes as presented. Dalton seconded the motion. The motion carried unanimously.

**ORAL OR WRITTEN COMMENTS OR REPORTS**

None

**OLD BUSINESS**

None

**NEW BUSINESS**

**2021-07-01-CR 350 N & Airport Road- Allow 5' Setbacks from Property Line-**

Keeven turned the meeting over to the assistant city planner Ihrie for a brief explanation of the request. The petitioner has requested a variance to permit a five foot side yard setback instead of the seven foot side yard setback currently required. This variance would apply to all lots of this proposed development, except corner lots, and where lots are affected by easements. By upholding the setbacks at easements and corner lots this request will not be injurious to public health or safety in creating obstructions to sightlines, utilities, or drainage systems. This variance request applies to an area not included under the consideration presented in the comprehensive plan. Based on the information provided and the previous success of the Belle Augusta subdivision, it is the opinion of the Planning Department that this case could be viewed favorably when measured by the criteria delineated within the Findings of Fact.

Keeven opened the meeting to any person wishing to speak in favor of the petition. Jeff Thomas, Oakmont Development doing Greenbiar subdivision stated he is aware this land is currently zoned as residential with normally seven foot setbacks. Oakmont is requesting the five foot because it just works a little better.

Keeven asked if the City Engineer James Emans has had a chance to take a look at this plan. Ihrle stated that at this point it was not necessary to have Emans take a look at this because this is just for preliminary approval before it goes to Plan Commission, where Emans would look at the plans. Keeven also asked if the streets and traffic had been reviewed. Ihrle stated that will be reviewed at Plan Commission.

Keeven then opened the meeting to any person wishing to speak against the petition. Steve Snyder stated he was there on behalf of Tony and Mary Nicholas who are adjacent property owners. Snyder passed out information to the board members. Snyder stated that R-1 is the zone with the least density and with the developer's requested we would be significantly increasing the density. Snyder's own personal opinion is if this is what the City of Warsaw desires on this property the first step would be to rezone the property to a R-2 classification rather than an R-1. Snyder stating R-1 is usually applied to fringed areas of the city; it is also the most restrictive of all of the zoning districts. Snyder went on explaining the requirements for an R-1 zoning area and comparing the difference between an R-1 and R-2 zone. He then explained the papers he handed out earlier. Snyder stated on page two of his handout the map shows there is wetland on the proposed property, defined by the National Inventory of Wetland's map. Snyder stated that IDEM and the Army Corps of Engineers do not look favorable on disturbing wetlands even if it is with a retention area. He stated that is a concern that he thinks the board should consider when making their decision. Snyder went over how the Dells have large lots all with single family home with significant amount of open areas. He went on comparing the Dells and the proposed subdivision. Snyder then stated how his client's property is 18.5 acres with one single family home and 470 feet of the Nicholas property is adjacent to the proposed subdivision. If the variances are granted six lots would be placed adjacent to his client's property. Snyder stated how CR 350 N is a heavy traffic area; with the 136 new lots we can anticipate an increase of 272 vehicles. He stated how this is a concern adding this many vehicles to the already heavily trafficked area, plus all the construction vehicles over the next few years while they are building this development. Snyder is also concerned about all this traffic entering the Dells on Knollwood and all the turns they need to take to get out to 300. Snyder stated he is concerned about the safety of the children in the Dells with the added traffic. He thinks fire and emergency vehicles should also be a consideration when you are looking at areas in which you would increase density because accessibility to the lots will be significantly impaired. Snyder thinks what is most important to look is the requirements the city ordinance imposes on an R-1 zoning area. Snyder stated what we are dealing with is a significant reduction in the city's requirements. The requirements state lot width of 70 feet and what we are dealing with is 40-50 feet, which is much smaller than the required amount. He stated the side yards and rear yards are smaller than the requirements as well. Snyder stated if you look at the R-2 requirements this is a subdivision that would more likely apply in an R-2 zoning area. Snyder stated in section 6.7.1 prohibits the approval of a variance if it's contrary to the public interest and only in the event there are special conditions concerning this real estate which result in unnecessary hardship if your R-1 standards are applied. He continued on down to section 6.7.3.1 which states the request for the variance

cannot be approved based on an inconvenience or an economic hardship. Snyder stated if that is the only bases for the request than this variance can't be approved. Snyder stated this is bare land you can design around bare land very easily. There is no hardship that he can see. Except the developer wants to place more lots with higher density so that way there is a better value obtained from the property. The conditions necessary for approval of the variance must be unique to this property. Snyder stated this property is no different than any other 40 acre parcel which is relatively flat and subject to division. There is nothing unique about this piece of property the only thing unique is what the developer wants to do with the property but that is his own creation. Snyder stated the next section states the condition cannot be caused by the owner. He stated the condition that creates this "hardship" is a direct result from the developer's plat and his desire to have smaller lots with reduced in setbacks. Snyder stated that if the variance is approved it cannot constitute a change of use. He would suggest that if this is approved the use of this track of ground will be changed from an R-1 to an R-2 and even then it does not meet the requirements for lot size for an R-2 zone. For the approval for a variance by any board of zoning appeals per the state findings it cannot create something dangerous. Snyder stated he thinks traffic in this condition would fit right in that description. It also cannot have a significant impact on property values and he would suggest that putting an R-2 subdivision next to the Dells or his client's property does just that. Snyder thinks it would have a negative impact especially those adjacent to those lots on the south line of this subdivision. The city's standards require that it doesn't alter the lands use in section 6.8.2.1 that it doesn't impair light and air to the adjacent properties, that it doesn't increase hazards of any kind, that it does not reduce value of adjacent properties, that it doesn't increase traffic congestion, and that it doesn't impair public health, safety, convince, comfort or general welfare. Snyder stated the requirements in his option cannot be met. Keeven asked for clarification if Snyder was trying to stop the whole project or just trying to make sure all lot sizes compile with R-1 zoning. Snyder stated that if a plat is presented that meets all the requirement of an R-1 zoning then and the plan commission doesn't have any discretion to not approve that plat. Snyder stated he is not trying to stop development they want to make sure the development is consistent with the R-1 zoning requirements. Discussion continued. David Letsch, owes 78 acres across the street stated he has two driveways for his business that runs out to 350. He expressed concern that when his business is up and run full time all his traffic will pull out right across this subdivision. He stated he could have semis in and out of his business and that should be a safety concern. Letsch stated that he also owes property in the Dells, 3339 N Royal Oak Ct. He is worried his property value will go down. He said he will look out his bedroom window and see 10 lots. He stated that he thinks people will use the Dells to exit and those roads already need repaired. Keeven asked for clarification if traffic should be considered or is that sometime that is worried about at Plan Commission. Reust stated everything should be considered at this time. Keeven asked who has looked at the traffic situation. Justin Taylor, City Planner stated we have a robust arterial road next to the airport so we are not as concerned about traffic on 350. Taylor stated there are going to be busier times of the day but at this point we have not looked closely at traffic with the proposed development. He stated it is not a major concern. Discussion continued. Matthew Graham, resistant of the Dells stated if you talk to someone from the Dells traffic is not what it may seem like on paper. He expressed concern that normally three or four times a week there is train stopped on the tracks for about twenty to thirty minutes. Graham thinks when train is stopped on the track people will cut right through the Dells. Jeremy Corson, adjacent property owner stated how he feels he is in the dark with all this because he never received his letter. He stated he did submit some papers to

Justin prior to this meeting and he hopes those would be taken in to consideration at this meeting. Nick Poe, adjacent property owner stated he thinks it is an objective reality that the traffic is a concern, the evidences is clear, and the subjective option of people from the adjacent neighborhood. He also stated how the train stops on the track at least three times a week. He stated that it is a shame that the train stopping on the track is not a consideration at this phase. Poe stated that his main concern is property value. It's not conjecture that property value will go down for those who are adjacent to this new division. There has been a ton of research done by the University of North Carolina Chapel Hill that basically ask the question do affordable housing, track housing, or multifamily that is disproportionate in value effect neighboring values? Would it affect the Dells? Poe stated that all the data is pretty clear that it doesn't affect property value; if you have two or three tack homes. He continues and says the language these studies point to over and over again is the word cluster. If you cluster in a bunch of these affordable houses and put them against an established neighborhood, the established neighborhood will go down in value. Poe stated you have to prove and demonstrate that you are not doing harm to the adjacent neighborhood in order to approve that variance. Brian Poe, adjacent property owner gave the history of his property and how it has been in his family since 1920. Poe talked about how traffic has increase over the years and the effects of adding 136 new homes will cause. He stated he has concerns about safety, property value, and last but not least privacy concerns. Poe stated if he walks down his driveway there would be the back of those villas about 20 feet away. He pointed out the difference between Bell Austa and some of the other neighborhoods, which have villas like this but didn't have an established neighborhood by them. Scott Thomas, resistant of the Dells stated he just wants to go on the record to echo what everyone else has said. He expressed concern about decrease in property value and the safety issue with all the traffic. He is worried about all the kids riding bikes or runner with the increase of traffic. Jacob Kissling, active runner stated how he goes running all the time on 350. Kissling stated his main concern is the condition of this road. He stated how the road is full of potholes. Kent Easterday, adjacent property owner stated he just wants to go on the record and echo everything else everyone is saying. He is concerned with traffic, safety and property value. Lana Farling, resistant of the Dells expressed the concern about the safety of her grandkids with the increase of traffic. Farling also stated she is worried about decrease in property value. They have lived in the Dells 20+ years and don't want to see property values go down. Ben Bowers, adjacent property owner stated traffic will be a big issue. He is really concern about the traffic when a train stops on the tracks and traffic has to back track. Bowers stated when that happens it backs up traffic at the light by Bell Tire and by Menards. Bowers also expressed concern about decrease in property value. Bowers said if this development goes in they will have to put in a fence because he is worried about the safety issue with kids running over to the open lot at the church to play. Bowers asked the board how they calculate how much this will affect their property value. Discuss continued among Keeven and Reust.

Jeff Thomas stated he is aware they are in a R-1 zoning. Thomas stated that after dealing with staff he thought this was an option to come to BZA to ask to go from 7" setbacks to 5" setbacks. He stated going from 7" to 5" doesn't really affect their layout of the subdivision. Thomas said they will comply with anything the city traffic asks them to do. He stated that if they don't receive the variance they will lose two lots. He did want to let everyone know he is planning on starting the attached villas at \$250,000 and the single family homes should start out at about \$300,000- \$350,000. Thomas said that in that last year the average cost of a house sold in the

dells is \$280,000. He said also something to consider is the stub street was obviously planned to come out to 350. Keeven asked Thomas what is his unnecessary hardship? Thomas stated that the land is a very narrow piece of property so this layout works out better for the developer to have 5' setbacks. Keeven closed the meeting to the public.

Motion was made by Johnson to deny the *2021-07-01 Variance of Development Standards- Allow 5' setbacks from property line*. Smith seconded the motion. The motion passed unanimously to deny *2021-07-01-Variance of Development Standards- Allow 5' setbacks from property line*.

**2021-07-01-CR 350 N & Airport Road- Allow 0' Setbacks on Adjoining Side Yard and Reduction in Minimum Lot Size for Lot 77-136-** Keeven turned the meeting over to the assistant city planner Ihrie for a brief explanation of the request. The petitioner has requested a Variance to augment the applicable side-yard setback requirements to allow the construction of single-family attached housing units on the lots numbered 77 through 136 of the proposed Greenbrier subdivision. This variance would only apply to the side of the lots where the single-family attached units would adjoin. The non-adjoining side of the property would still conform to the prescribed setbacks. The petitioner also requests a variance to eliminate the minimum lot size requirements for lots numbered 77 through 136 of the proposed Greenbrier subdivision. The reduction of lot size would be essential for the development of the single-family house attached housing units. This variance request applies to an area not included under the considerations presented in the City of Warsaw's comprehensive plan. Based on the information provided and the previous success of the Belle Augusta subdivision and town homes located on South Buffalo Street, it is the opinion of the Planning Department that this case could be viewed favorably, when measured by the criteria delineated within the Findings of Fact. Reust recommended to the board to consider all the comments and statements from the early case in this case to prevent having to hear everything again. He stated that there could be something new that someone might want to add.

Keeven opened the meeting to any person wishing to speak in favor of the petition. Jeff Thomas, Oakmont Development stated they are asking for 0' setbacks for attached villas. They will be maintaining the snow removal and yards on these lots. They need the 0' setbacks because they can't do attach villas with any kind of setbacks. Smith asks Thomas to explain the villa concept of what they are proposing. Thomas explained they will still have setbacks between homes but they will have a common wall. The common wall will be on the property line. Smith asked if the west villa catches on fire then the east villa is gone. Thomas explains the common wall will be a fire wall that protects one villa from the other villa. Smith argues that the fire wall will not work. Thomas states they have had a situation in the past where the west villa caught fire and the east villa had no damage. Thomas explained that is a building standard that they have to have from a construction standpoint.

Keeven then opened the meeting to any person wishing to speak against the petition. Steve Snyder, on behalf of Tony and Mary Nicholas who are adjacent property owners stated you are dealing with the same issues as the previous request. Snyder stated Thomas is trying to get the city to approve multifamily housing in an R-1. He went on to say I don't care what you call it but

if you have two houses that are attached you call them multifamily, you have two families living there. Snyder stated the villa concept is an extension of a fifty year old condominium concept that was adopted in Indiana. You can have detached villa/condominiums, which sound like what they are proposing. Snyder stated the developer want to build attached condominiums and provide all the maintenance required for those villas. You can also provide the maintenance for single family unattached home. Snyder states there is no hardship by building them together. They just want to do that because it is cheaper. Snyder states that there is no hardship here; multifamily homes belong in R-2. He stated this request is even less compatible than the setback reductions from the single family portion. Jeremy Corson, 3345 North Knollwood Drive stated a lot of neighbors adjacent to this property have encroachment easement contracts and he would like to know how that effects with the closeness of the homes. He stated his house is set in to an easement three and half feet more than we should be. Corson asked is that something that is considered when developing these lots. Taylor asked specifically what kind of easement he is talking about? Drainage? Taylor reviewed the document Corson had with him. Taylor told him that if he is violating the easement that would not be good for his development. He said if it is right next to the new development it would be considered. All drainage easements would have to be connected from the new development so it would be considered. Scott Thomas, adjacent neighbor stated he would like to just go back after hearing some of the comments starting off about multifamily homes joining a single family neighborhood. Thomas stated he thinks that will really affect his property value. He went on to point out the value of these new homes that we are talking about is new construction value. He wants to know what is going to happen in ten years down the road. Thomas wondered if this new neighborhood is going to have a covenant. He stated they have one in the Dells. Thomas is worried that the new homes won't be kept up and he wondered if they would have the same restrictions as the Dells. He stated they don't even allow sheds in the Dells so he was wondering if the new neighborhood would allow them. Thomas went on and expressed concern that these are starter homes; he is worried that the property owners are not going to invest into these properties. He stated he understands that there will a fire wall but he is concerned about people penetrating those walls. He went on to talk about how fast fires spread even with a fire wall.

Jeff Thomas stated they will be meeting all the building codes that are required to build attached housing. Thomas stated that each side of the villas is owned by a single family so it is not considered a multifamily home. He went on to reinstate how they are going to maintain the grounds on the villas. They will mow the lawns and take care of the snow removal. Thomas stated the single family homes will be responsible to take care of their own lawn just like the Dells. He did state that the new development will have a covenant to maintain properties are kept up. Keeven closed the meeting to the public. Smith questioned if the new neighborhood will have the same covenant as the Dells. Reust stated that is not for the city to decide. Discussion continued.

Motion was made by Smith to deny the *2021-07-02 Variance of Development Standards- Allow 0' setbacks from property line*. Dalton seconded the motion. The motion passed unanimously to deny *2021-07-02-Variance of Development Standards- Allow 0' setbacks from property line*.

**OTHER MATTERS THAT MAY COME BEFORE THE BOARD**

- Next meeting will be September 27, 2021

Dalton made a motion to adjourn the meeting. Smith seconded the motion. The motion carried unanimously.

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Rick Keeven, Vice- President

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Whitney Shilling, Recording Secretary