

**WHITLEY COUNTY BOARD OF ZONING APPEALS
STAFF REPORT**

19-W-VAR-7 DEVELOPMENT STANDARDS VARIANCE
Cardinal Creek Development, LLC
Northwest corner of 700S and 800E

JUNE 25, 2019
AGENDA ITEM: 1

SUMMARY OF PROPOSAL

Zoning: RR, Rural Residential (proposed)
Property area: 60 acres

The petitioner, subsidiary of the applicant Granite Ridge Builders, is requesting development standards variances to permit the construction of 117 single-family dwellings on a site they have under contract at the northwest corner of CR 700S and CR 800E. A rezoning petition from the current AG zoning district to the proposed RR district is to be heard by the Plan Commission on the 19th, along with a primary plat request. The variance request and this report are based on and make reference to the currently proposed plat and proposed RR zoning.

The petitioner is seeking to reduce the required front setback of 35' to 30' and to reduce the required side setback of 10' to 5' for all lots in the subdivision.

REVIEW CRITERIA

Indiana Code §36-7-4-918.5 and Section 10.10 of the Zoning Code state the criteria listed below upon which the Board must base its review. Staff's comments/proposed findings of fact under each criterion.

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

The proposed setback variances will not likely be injurious to the public morals, as structure separation is not likely to cause, allow, or otherwise be related to immoral activities.

Public health and safety may be injured by the requested reduction in side setbacks due to the increased fire risk and reduced light, air, and access to and around the primary structures. While the RR zoning district does permit accessory structure setbacks of the requested 5', such structures are not intended to be occupied, unlike the primary structures. For reference, the LR district does permit 5' side setbacks for lots created prior to 2006 (and 10' setbacks for those created after); however, the 5' setback in the lake areas largely originates from small lot widths in those areas and from the established setbacks.

The front setback variance request would be unlikely to be overly injurious to public health and safety, as 30' front setbacks are typically sufficient to maintain access across the lot frontage for the property owner, utilities, and others. Further, the distance is still sufficient to permit the parking of a standard length automobile in the driveway between the front of the house and right-of-way line, thus not obstructing the public right-of-way area.

The general welfare may be injured by degrading the effectiveness of the zoning regulations if there are not peculiarities specific to this property or proposal that differentiate this site and conditions from other properties generally.

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; and

The proposed setback variances would be unlikely to adversely affect the use of the properties in

the surrounding area. The rezoning and platting of the property in general may have effects on the surrounding properties' usage, but these variances in themselves likely would not.

Similarly, the value of the surrounding area would likely be affected by the rezoning and platting, but the requested variances in themselves would not have any particular effect. While an argument could be made regarding the price and value of the proposed homes being contingent on the separation between houses and resultant lot sizes, such effects on surrounding properties would be difficult to determine, let alone if they would be substantially adverse.

3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction or restriction of economic gain.

Finding practical difficulties in any blanket setback variance for a new, green field development is problematic. Such variances are often based on particular and very specific site conditions that preclude compliance with standards, such as soil conditions, extensive wetlands, etc. Alternatively, such variances may also be requested to permit particularly different uses, development types, or structures that were not contemplated when writing the zoning regulations. Examples of these may be certain types of energy-efficient structures, neo-traditional neighborhoods, mixed uses, etc. The Board should examine this site and proposal and determine if there are such site conditions or if the proposal is such that it does not fit well within the application of the zoning ordinance and would warrant a variance.

In discussing self-imposition, the Board should be reminded that the self-imposition criterion is viewed as that condition creating the need for the variance is self-imposed, not that the petitioner's proposal is self-imposed. Otherwise, any proposal to do anything with a property would be a self-imposition. In this case, the Board should evaluate if the requested variances are caused by an existing external condition or an onerous zoning standard, or if they are self-imposed by the petitioner's own doing or desires.

Date report prepared: June 14, 2019

BOARD OF ZONING APPEALS ACTION

Motion:

By:

Second by:

<i>Vote:</i>	Deckard	Denihan	Lopez	Wilkinson	Wright
<i>Yes</i>					
<i>No</i>					
<i>Abstain</i>					