



April 29, 2010

Jim Van Ness
9210 N. Meridian St.
Indianapolis, IN 46260

RE: Docket # 9-V-10
Timberstone Villas Section 1 setbacks

Dear Jim:

This letter is confirmation of the decision of the Town of Fishers' Board of Zoning Appeals (BZA) on April 28, 2010. The BZA **granted** your requested variance from the Southeast Fishers Planned Unit Development Ordinance Area C2 "Timberstone" amendment (#100305E) to reduce the minimum rear yard setback from thirty (30) feet to twenty (20) feet in regards to lots numbered: 12, 13, 15, 16, 18, 19, 20, 21, 22, 24, 25, 26, 30, 32, 33, 34, 37, 38, 39 and 42, with the following voluntary commitment:

- **The encroachment into the 30' setback will only be for 3 season rooms or screened porches.**
- **These additions will not exceed 50% of the width of the rear of the house.**

The official Minutes of the BZA Meeting will not be available until they are approved (usually at the next month's BZA Meeting.) If you would like a copy of the Minutes, please submit a request and we will send out a copy once they are approved.

It was a pleasure working with you on this matter. Should you have any questions, comments or concerns, feel free to contact me at your earliest convenience. When applying for your permits, please reference your BZA docket number (9-V-10) on the application.

Again thank you for your professionalism and I look forward to working with you in the future.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rick Brandau".

Richard (Rick) R. Brandau
Asst. Director/Zoning Administrator

cc: File

DEVELOPMENT DEPARTMENT



DEVELOPMENT STANDARDS
VARIANCE APPLICATION

TOWN OF FISHERS
DEPARTMENT OF DEVELOPMENT
One Municipal Drive • Fishers, Indiana 46038-1574
317-595-3120 • Fax: 317-595-3134

(From the Requirements of the Master Plan and Zoning Ordinance #110380)
Docket Number: 9-V-10
Project #: 10030004

1. APPLICANT INFORMATION

Name: Westport Homes, Inc.
Address: 9210 N. Meridian St, Indianapolis, IN 46260
Telephone: 317-844-0433 Fax: 317-844-0622
Contact Person: Jim Van Ness - Development Manager
Email Address: jimve@westport-home.com

2. OWNER OF PROPERTY WHERE VARIANCE IS BEING REQUESTED

Name: Triton Development
Address: 9210 N. Meridian, Indpls
Telephone: 317-844-0433 46260
Fax: 317-844-0622
Contact Person: Jim Van Ness
Parcel ID #: (see attached)

3. PROPERTY INFORMATION

Location: vicinity 9800 Brookwood
Street Address Drive
Lot #: 12-13, 15-16, 18-22, 24-26, 30, 32-34, 37-39 and 42
Subdivision: Timberstone Villas Sec 1
Land Use: Residential
Zoning: PUD
●●●Legal Description Must Be Attached●●●

4. FULL STATEMENT OF VARIANCE REQUEST AS APPLIED FOR UNDER THE REQUIREMENTS OF THE MASTER PLAN AND ZONING ORDINANCE, #110380

Development + Standards Variance from Southeast Fishers PUD Area L2 "Timberstone" amendment #100305E to reduce minimum rear yard setback from 30 feet to 20 feet

5. CERTIFICATION

I hereby certify that I have the authority to make the above application, that the information, to my knowledge and belief, is true and correct.

Signature of Property Owner Steven M. D.

Signature of Applicant Jim Van Ness

STATE OF INDIANA, COUNTY OF HAMILTON, SS:
The information contained herein has been duly subscribed and sworn to me this 26 day of

March 2010

Mary A Oliver
Notary Public

MARY A OLIVER
Notary Public

My Commission Expires: 3-4-11



**TOWN OF FISHERS
BOARD OF ZONING APPEALS
MEETING MINUTES
TOWN HALL AUDITORIUM
Wednesday, April 28, 2010**

The Board of Zoning Appeals convened at 6:30 pm.

A roll call was taken and those members present were Mr. Warren Harling, Mr. Dan Meador, Mr. Chuck Gillespie, Mr. Brian Atkinson and Mr. Steve Ferrucci. With all members present, Mr. Harling declared a quorum.

Others present were: Rick Brandau, Assistant Director; Kevin Stotts, Planner II, Sara Distler, Recording Secretary; Ann O'Hara, Town Attorney; Gary Powell, Carol Harrison, Jim Lamb, Bob MacAleese, Gail Blue, Donald Blue, Jesse Hinkle, Chris Hendricks, Marty Dishman, Kira Kabo, Teresa Fancher, Marilyn Kleist, Mike Clodfelter, Cameron Clark, Elizabeth Williams, Steve Qualley, Gloria Hess, Cory Kihlstrom, Muhammad Bhutto, Doug Beckner, Johnas Wick, Kevin Wilson, Scott Wilson, Ray Compton, Mary Compton, Doug Talley, John Willenbrock, Jane Willenbrock, Debra Jacobs, Regina DelaRosa, Maureen Pettypool, Daniel Bennett, Jennifer Bennett, Jean Richards, Denise Miller, Roy Johnson, Suzanne Clase, John Sobek, William Blackwelder, Alexandra Eilmann, Jarrett Hiatt, Sierra Janjua, Branda Brydges, and Linda Dicks.

Reading of Previous Minutes – March 2010 – Mr. Gillespie made a motion to approve. Mr. Meador seconded. Motion passed unanimously

Public Hearings:

DOCKET # 4-V-10

KFC USA Properties

REQUEST: Petitioner is requesting a Development Standards Variance from Section 158.41(A)(1) of the Town of Fishers Sign Ordinance to allow for a menu board and pre-sell board to be installed. Also, Sections 158.41(B)(1) & 158.02 (Wall Sign Definition) to allow for more than one wall sign to be installed on the North, South, and West elevations which may be mounted more than 12" above the roofline.

The subject property is located southeast of St Rd 37 and 141st St., Block "B" in the Shoppes at 141st St.

PETITIONER: Ryan Oyster

This item was continued from the February meeting at the request of the petitioner.

This item was continued from the March meeting at the request of the petitioner.

Mr. Stotts stated that the petitioner is requesting a suspension of the rules. They were confused regarding the certified mail requirement and sent them first class, supplying the town with an affidavit. The Town of Fishers BZA Rules and Procedures require that the notice letters be mailed certified mail. The State of Indiana requirements do not specify certified mail. Mr. Atkinson made a motion to suspend the rules. Mr. Harling seconded. Motion passed 5-0.

Kira Kabo presented this item. They are requesting a pre-sale board in addition to a menu board. Both of these boards will be behind the building. They are also requesting 7 signs, including a

number 11 representing the 11 herbs and spices. The 11 sign will not be illuminated. Some of the signage shown is more than 12 inches above the building.

Mr. Harling opened the floor to the public. There was no remonstrations. Mr. Harling closed the public hearing and asked for staff comments.

Mr. Stotts stated that the petitioner would be allowed 2 wall signs, 87 sq ft each, totaling 174 sq'. They are asking for 126 sq'. Staff is supportive of this part of the request.

Mr. Stotts stated that staff has questioned the "11" boards. The presale and menu boards are similar to what would be allowed in the next sign ordinance. Staff is supportive of the overall request.

Mr. Harling asked the petitioner if she would like the components of this variance request voted on separately. She replied that she would.

This variance was divided into 3 separate components for voting.

In regards to the pre-sale board and menu board: Mr. Meador made a motion to approve. Mr. Atkinson seconded. Motion passed 5-0.

In regards to the number of signs: Mr. Meador made a motion to approve with the following voluntary conditions:

- **The "11" signs will not be illuminated**
- **The signage will be as presented in this petitioner packets for this meeting**
- **This variance will run with the business**

Mr. Atkinson seconded. Motion passed 5-0

In regards to the height and location of the wall signs, Mr. Meador made a motion to approve as presented in the petitioners packets for this meeting. Mr. Atkinson seconded. Motion passed 5-0.

DOCKET # 6-UV-10

Verizon Wireless

REQUEST: Petitioner is requesting a Land Use Variance from the Town of Fishers Planned Unit Development Ordinance # 040892A (The Legends @ Geist) to allow a wireless communication facility with a 125 foot monopole tower and a 5 foot lightning rod for a total height of 130 feet within a fenced and landscaped ground area, also housing a 30 by 11.5 foot equipment shelter.

The subject property is located northwest of the intersection of Fall Rd and 106th St. having a common address of 10697 Hamilton Pass.

PETITIONER: Elizabeth Williams

This item was continued from the March meeting at the request of the petitioner.

Cameron Clark presented this item. He showed various diagrams of coverage areas and pointed out where coverage was weak. He stated that he had left the previous BZA meeting with 3 questions to answer.

The first question was whether or not existing facilities around the area could be used to cover the gap. He stated that Verizon had done a complete search of other options and that there were no existing structures that could facilitate another provider.

The second question was: what does the Telecommunications Act require? State or local entities cannot prohibit services. It is unclear in the language of the act whether they are referring to multiple services from one provider or service from multiple providers. As more services are used, the coverage areas continue to shrink and gaps widen. Demand in the area of the golf course is increasing. They compared the increase in demand to the increased use of roads in a quickly developing area. Mr. Clark stated that Verizon wants to be proactive and avoid gridlock, and that they must provide service by virtue of their license. He explained that the Fishers Police and Fire departments use Verizon services, including 75 air cards. He stated that Verizon also has an obligation to determine that their customers are getting what they paid for. 116th and Hoosier Road had been brought up at a previous meeting by a remonstrator. Mr. Clark explained that this intersection was outside the search area and a facility there would result in overlap without service to the area they are trying to cover. They do not have any other facilities that can be re-engineered.

Mr. Harling opened the floor to the public.

Scott Wilson (11164 Midnight Pass) stated that at the last meeting, the petitioner had stated that there had never been a study to determine if cell phone towers had a negative impact on property values. He stated that he had Googled the topic and found multiple studies related to the topic. He stated that property values could decrease by as much as 20%. He also wanted to know if Mr. Ferrucci would be recusing himself because he was absent from the last meeting.

John Willenbrock (11298 Mudd Creek Ct.) stated that after the last meeting, he wondered about the comments that this had anything to do with public safety. He stated that he had found an article in PC World and he now believes that this is an attempt for Verizon to keep up with AT&T and Sprint in the 3G race.

Regina DelaRosa (10838 Bentwater Lane) asked if any other spots on the Golf Course had been examined. She said she is opposed to the tower, but if it has to go in, she would rather see it farther back in the wooded area.

Karen Wilson (11164 Midnight Pass) presented a Verizon coverage map from website that does not show any gap in coverage in the area.

There were no additional remonstrators. Mr. Harling closed the public hearing and asked for staff comments.

Mr. Brandau passed out additional letters of remonstrations that had been received by the Department of Development. He explained that staff had flown a balloon over the area and believes that the trees are approximately 62' tall. He stated that staff has no recommendation on this item, and sees cell towers in general as a necessary evil. If they have to be installed, he would like to see that they provide as much service as possible. If this one is installed, it will provide 4 mounts. Verizon would only be using two at this time.

The board reviewed the letters that had been passed out and asked legal council to address the question of whether or not Mr. Ferrucci should be able to vote on this item.

Ms. O'Hara stated that Mr. Ferrucci had received a copy of the detailed minutes of the previous meeting and that he could vote on this item.

Mr. Meador asked if there were other cell towers in residential areas. Mr. Brandau stated that most of the ones east of Cumberland Rd. are in residential areas.

Mr. Meador asked if the tower location could be moved to another spot on the golf course. Mr. Clark replied that the wooded area mentioned was in low lying wetlands that would not accommodate this tower. The spot they are showing is the spot the golf course offered.

Mr. Harling asked if the coverage in the area is adequate for today. The representative from Verizon replied that it is needed today and service in the area would fail within 2 years without this tower.

Mr. Ferrucci asked if there was a "Plan B". Mr. Bhutto from Verizon replied that plan B would be to come back before the board and ask for 2 additional towers in separate locations.

Mr. Atkinson made a motion to deny. Mr. Ferrucci seconded. Motion failed to pass 2-3 (Harling, Meador, Gillespie)

Mr. Meador made a motion to approve. Mr. Gillespie seconded. Motion passed 3-2 (Atkinson, Ferrucci)

DOCKET # 9-V-10

Westport Homes – Timberstone Villas

REQUEST: Petitioner is requesting a Development Standards Variance from the Southeast Fishers Planned Unit Development Ordinance Area C2 "Timberstone" amendment (#100305E) to reduce the minimum rear yard setback from thirty (30) feet to twenty (20) feet

The subject property is located southeast of 104th St. and Olio Rd. with lot numbers: 12, 13, 15, 16, 18, 19, 20, 21, 22, 24, 25, 26, 30, 32, 33, 34, 37, 38, 39 and 42.

PETITIONER: Westport Homes/Jim Van Ness

Doug Beckner from Westport Homes presented this item. They would like to give their homeowners the option of adding a screened porch or 3 season room to the back of their homes.

Mr. Harling opened the floor to the public. There was no remonstrations. Mr. Harling closed the public hearing and asked for staff comments.

Mr. Stotts explained that this is the same request that came before the board in 2009 for 3 other lots in this neighborhood. Now they are asking for the same variance to apply to 20 additional lots.

The 2009 variance only allowed construction of 3 season rooms and screened porches. These additions were limited to half the size of the rear of the house or less. Most of these lots back up to a creek.

Mr. Atkinson asked about the few lots that backed up to other lots instead of the creek. Mr. Beckner explained that those lots were not sold yet and the purchaser would be aware of what would be on the other lots.

Mr. Atkinson made a motion to approve with the following voluntary conditions:

- **The encroachment into the 30' setback will only be for 3 season rooms or screened porches.**
- **These additions will not exceed 50% of the width of the rear of the house.**

Mr. Meador seconded. Motion passed 5-0.

DOCKET # 11-UV-10

Gary Powell

REQUEST: Petitioner is requesting a Land Use Variance from Section 2.007 Permitted Uses of the Town of Fishers Unified Development Ordinance to allow for a continued home occupation to be conducted on premises and to include a 1,200 square foot, 20 foot tall, accessory structure

The subject property is located northeast of the intersection of 96th St. and Mollenkopf Rd., with a common address of 10640 E. 96th St.

PETITIONER: Gary Powell

Gary Powell presented this item. He explained that he is a 23+ year resident and that he has always used this property for his home business. He stated that it has no impact on neighboring properties. When the neighboring property was under Noblesville's jurisdiction, it was granted a variance for two story commercial structure. He stated that his own plans for expansion were put on hold in 1996, when there was speculation regarding the expansion of 96th St. He is not seeking any change in zoning for the property.

Mr. Harling opened the floor to the public.

Daniel Bennett (10663 E 97th) stated that he opposes both the expansion of the business and the building of the 2 story structure. He showed pictures of the residence and explained that it is generally a well kept area, but that it has gotten worse over the past few years. The tent seems to have appeared in the last year and a half. He wanted to know if there would be deliveries, noise, and what the hours of operation would be. He is opposed to this variance.

Bill Schelske (10680 E. 96th St.) stated that he has no qualms about Mr. Powell building his barn. He stated that Mr. Powell is a good neighbor. He said that the drainage in the area has never been good, and this business would not add any traffic to the already busy 96th St. He is supportive of this variance.

Jean Richards (10725 E 97th St.) stated that she is concerned about noise and chemical storage.

Denise Miller (9781 Mollenkopf) stated that she is concerned about property values and her drinking water.

There were no additional remonstrators. Mr. Harling closed the public hearing and asked for staff comments.

Mr. Brandau passed out some additional remonstrations that had arrived since the packets were mailed to the board members. He explained that this is not an easy Use Variance process. Mr. Powell had called to ask what it would take to construct a 1,200 sq ft garage on his property. It was explained to him that he would have to go through the variance process. His existing business is a grandfathered use. He would be using the structure to house equipment that is currently stored outside, including two pickup trucks and a box truck. The expanded business would include 1-2 clerical staff, 1-3 construction employees, and 1 sub contractor. There would be no signage. The trees on the property limit where the structure can be placed. It might be possible to move it 4-6 feet from the current proposed location. The town's engineering staff went onsite to examine drainage issues. Mr. Powell is willing to handle any drainage issues this might create. The property to the west houses a golf club manufacturing business. Mr. Powell is willing to landscape. The town would like for him to quantify what will go in the structure and what would be left out. The town's fire department and building services have not reviewed this project yet.

Ms. O'Hara explained that Mr. Powell's use is legal non-conforming. He is allowed to continue this business. It is the expansion of the business and the construction of this size accessory structure which require variances.

Mr. Harling stated that he felt that this is too large a building for a quarter acre lot. Mr. Brandau explained that he had mis-spoken and that this is actually an 8/10 acre lot.

Mr. Meador asked Mr. Brandau if the size of the lot changed his mind. He replied that he thought it would still be an imposing structure. He stated that under Noblesville's original rules, Mr. Powell would have been allowed an accessory structure 50% of the size of his residence, not to exceed 1,000 sq ft.

Mr. Atkinson made a motion to continue this item for one month in order to give staff and petitioner an opportunity to address the following concerns and for the petitioner to talk with his neighbors:

- **Hours of operation**
- **Storage of hazardous chemicals/solvents**
- **Number of employees**
- **Type of operation**
- **Aesthetics of the proposed structure**
- **Total number of structures**
- **Specifics of business expansion**

Mr. Meador seconded. Motion passed 5-0.

Unfinished Business: None

New Business: Rules & Procedures: corrections – missing signatures were collected

Adjournment: 9:42

Respectfully Submitted by:



Sara Distler, Recording Secretary