

**WHITELAND BOARD OF ZONING APPEALS**  
**March 4, 2021**

**Council members present**

Richard Hill, President	x
Byron Temple, Vice President	x
Leslie Beeson, Member	x
Dan Csikos, Member	
Juanita Emery, Member	x

**Other town officials present**

Jennifer Brooking, Deputy Clerk	x
Carmen Parker, Planning & Zoning Director	x
Stephen Watson, Town Attorney	x

**Call to order:**

R. Hill called the meeting to order at 7:03 p.m.

**Pledge to the flag**

**Roll call:**

- Absent D. Csikos

**Determination of Quorum:**

- Needed Quorum reached

**Approval of Minutes:**

- R. Hill made a motion to approve the minutes from the 12/03/2020 meeting. Leslie Beeson seconded the motion. **Passed 4-0**

**Swearing In:**

- Completed at 7:05 p.m. by S. Watson
- 

**Communication**

- C. Parker stated if any personnel information has changed please let Carmen know.

**Old business:**

- None

**New business:**

- **Case 21-V-01 Variance - Briar Creek Lot 26 (180/182 Wild Turkey Run)**
  - C. Parker presented case #20-V-01: 180/182 Wild Turkey Run for a waiver to encroach rear yard easement with consideration of installing a backyard deck rather than a patio. She summarized the history of the development concept known as "Briar Hill". Is currently zoned R3. Located south off of Whiteland Road.
  - C. Parker summarized the history of the zoning review of the reduction front yard setback from 30' to 25'. She then summarized the history of the alternative structure being placed in an easement and the Briar Creek Section 1 Final Plat Covenants, Conditions, and Restrictions. On plat 25' drainage and utility easement identified and plot plan indicates it's only 20'. Petitioner is requesting, alternative structure to be placed on the easement. He wants approval to place a deck with 6 x6' posts. Plot plan shows center of swale is where the patio would be placed. Petition wants to encroach with deck posts, not the concrete patio. Petitioner also states if the variance is allowed, they would not need to remove any more trees from the rear yard.

- Staff findings that it would negatively impact the adjoining neighbors in the Briar Creek Villa and after consulting with towns' engineers the deck will eliminate 50 percent of the easement area which could impede the flow of water through the drainage swale.
  - Staff recommendation is a denial of the petition based on the findings of facts of the petition. Carmen welcomed the petitioner to speak.
- Adam Mears stated the primary request for a 5' decrease will require the removal of a lot of existing trees. Wants to be able to save trees but will significantly change the tree line. If move house up 5 feet, won't be easy to see significant difference. Will allow the deck not to be in swale and won't require moving trees. If the request is denied there will be a different house built on the plot with a different model home. Deck is not a permanent structure so if move everything up 5 feet won't be in the easement in a significant way. Ryan Homes states will not affect the drainage.
  - S. Watson instructed R. Hill to provide the audience with the rules of public hearing and time allocations provided.
  - S. Watson stated the petitioner is given 15 minutes to speak. The BZA can then ask questions and speak to the petitioner. The audience will have a total of 20 minutes combined. Each public member has 2 minutes to speak. Comments should be presented to the board, not the petitioner. Please make sure to keep time controlled. Petitioner then has 5 minutes for rebuttal.
  - Josh Haas, with Ryan Homes, stated a buyer came in and liked the lot, but wants to put the larger of the 2 model houses on that lot. He requested a waiver to encroach 20' rear yard easement with consideration of installing a deck in place of a concrete patio and also a reduction of the front yard setback from 30' to 25'. He stated that the lot will only slightly breach the swale on the lot. He also stated that the potential buyers would like to purchase that lot and have the larger model home built.
  - R. Hill inquires that there is nothing on the lot at this time. States the pictures show footers but they are for a different lot.
  - A. Mears states that Ryan Homes doesn't buy a lot from them until they have a client under contract.
  - L. Beeson inquires what the square foot difference between the two models.
  - A. Mears states that the Barbados Isle model is about 1300 square feet and the other model is about 1600 square feet.
  - L. Beeson inquires what the deck size is compared to the concrete patio.
  - A resident stated both are 10 x 12.
    - R. Hill told him to hold his comments until later
  - L. Beeson inquired if they had any kind of data on how the deck could affect the drainage.
  - Adam Mears states that it would only be slightly encroaching because it is a pretty large swale. Also stated that as the developer they do not think there would be any impact on the swale because they bond the swale and they would be responsible for it.
  - L. Beeson inquired if the BZA does not approve the petition for the setback, would anything different be done.
    - Adam Mears stated the only difference would be for a smaller model home to be built on plat. There would be a deck or patio regardless of which model home is there. No change to drainage.
  - R. Hill inquired for clarification if smaller model was used would he need to obtain a variance?
  - A. Mears stated no variance would be needed, but trees would need to be removed.
  - S. Watson stated 25' plat is correct and accurate. The plot incorrectly stated at 20'.
  - R. Hill Opened the Public Hearing at 7:32 p.m. and advised everyone to keep an orderly manner and to keep it professional.

## Pubic Form

- Jeff Watson-181 Halldale Dr - The house that being built now is right on the edge of the swale. If they continue up north, they'll probably have to cut down trees that they would like to stay.
- Kari Genter-159 Halldale Dr – The model is Barbados Isle. Don't think what they say is true. Doesn't want the trees removed. Go through swale to get to trees. Agrees to bring the houses forward. Yellow pegs that show where property lines are.
- Crystal Skiles-59 Halldale - We were here 2 years ago for variance on their fence and pool. We liked the shorter home and don't want to see taller and larger home. Paid \$5k for larger. Have gotten away with so much. We are trying to make Whiteland our forever home.
- Kevin Steele-191 Halldale Dr- We paid an extra premium of \$1500 for the tree line through Arbor. Told my Arbor that the tree line was there and farmer was not selling the land. Bushes and tree line is destroyed. Requesting a privacy fence be placed on Ryan Homes side for privacy.
- Tanner Atkins-71 Halldale Dr- The value of utility strip in backyard work for utility contracting company. Really difficult for neighborhoods that don't have a utility strip. Value of agreed upon space is massively valuable and think twice about giving it up.
- Josh Dunlap -91 Halldale Dr – Stated if the houses are going to be built, he would support a fence because he was told the tree line wasn't going to be touched and nothing would be built behind them. I was told by the developer if I don't move my stuff by Sunday then it would be moved for me.
- Mike Mattack -220 Wild Turkey Run - We moved in last June. That home sits further back than their home. Drainage problem already. Still had water in swale a couple inches deep 4 days later. We're told it was a Conservation easement and told that we weren't supposed to touch weeds. Farm fence is still in place that has barb wire. Large hunk of concrete sitting 1 ft inside property line to have them removed. If you walk along the like there are large tree trunks and debris that's not being kept up well.
- Tom Kazmucha -118 Wild Turkey - Is questioning the decking according to the convenance.
- Adam Mears stated that he is going to address Mr. Dunlap and stated he thought it would be better to speak in person and tried to ask in a polite manner rather than sending a certified letter.
- R. Hill requested the outburst stop and understands frustration. Also stated that the town can't go back and change what was done years ago.
- Adam Mears stated that there were a lot of things that Arbor Homes promised. There are stakes out there that show the property line. If removing the trees is needing to be done, we can do it because it is our property. They can't be held responsible for what other people told them. He also stated that they build the infrastructure and does so before the lot is sold. There is not going to be a privacy fence going up and we want to save trees. If we're moving swales in the next section, we may have to lose trees. Nothing will be done on Sunday except to be asked to remove their stuff from their property. Adam stated it was clear that the petition was not going to be granted and he looked forward to hearing the no votes.
- S. Watson swears in Nicole Seal of 191 Halldale Dr – Inquired if she will have to worry about her trees getting cut down on Sunday and if any equipment would be on her property to remove trees.
- R. Hill recommends for residents to have their property lines staked out by engineer if concerned about plats. Also, suggested to take it upon themselves to investigate or have a civil conversation with developer or property owner. Can't comment on the owner of the tree.
- Public Hearing Closed at 8:04 p.m.
- S. Watson wants to make sure the BZA understands its jurisdiction on setbacks and easements. BZA has jurisdiction concerning setbacks. Easements are not within the BZA jurisdiction. That is the jurisdiction of the Town Council. Recommends to consider this petition is asking for variance of the setbacks. Whatever decision is made it has to be supported by written findings of facts. Suggests that finding of facts may need to be tweaked depending on final decision.
- R. Hill stated based on info presented his concern is all could be eliminated if just put the smaller house on the plot. Doesn't know about the tree line issue, but it will have to be resolved with home

owners and Mr. Mears. Hill then states he believes all board members are all in agreement with the staff report.

- S. Watson recommends that Staff Findings Report in criteria #3 be changed to state "The strict application of the terms of the zoning ordinance will not result in practical difficulties in the use of the property because a different model home can be constructed on the property. Watson suggests that the same language changes should be made in the Staff Findings of the 2<sup>nd</sup> consideration by the petitioner.
- R. Hill made a motion to deny the petition and have the written findings of facts be modified as previously stated by S. Watson. L. Beeson seconded the motion.
  - **Denied 4-0**

**Other business:**

- None

R. Hill made a motion to adjourn. Meeting adjourned at 8:13 p.m.

---

Richard Hill, President  
Whiteland Board of Zoning Appeals

Passed by the Board of Zoning Appeals on this day 1<sup>st</sup> of April, 2021.

Aye

Nay

Leslie Beeson  
Leslie Beeson

\_\_\_\_\_

Leslie Beeson

\_\_\_\_\_

Dan Csikos

\_\_\_\_\_

Dan Csikos

Juanita Emery  
Juanita Emery

\_\_\_\_\_

Juanita Emery

Byron Temple  
Byron Temple, Vice President

\_\_\_\_\_

Byron Temple, Vice President

\_\_\_\_\_

Richard Hill, President

\_\_\_\_\_

Richard Hill, President

Attest:

Jennifer L. Brooking  
Jennifer Brooking, Secretary & Deputy Clerk Treasurer

