

**Valparaiso Board of Zoning Appeals  
Regular Meeting Minutes  
January 18, 2023**

The regular meeting of the Valparaiso Board of Zoning Appeals was held at 5:30 p.m. on Wednesday January 21, 2023, at Valparaiso City Hall, 166 Lincolnway, Valparaiso, Indiana. Remote access was available via livestream on the Valparaiso city website. Kyle Yelton presided. The Pledge of Allegiance was said. Members present were Diane Worstell, Paul Reed, Kyle Yelton, and Mark Ribordy. Bill Oeding was absent. Also present were Beth Shrader, Jessica Gage, Attorney Patrick Lyp, and petitioners.

**MINUTES**

Adoption of Meeting Minutes – December 21, 2022

**MOTION:** Paul Reed moved to approve the minutes from December 21, 2022. Diane Worstell seconded the motion and so approved with a 4-0 voice vote.

**OLD BUSINESS**

**VAR22-019**

A petition filed by El Sabor Poblano c/o Carlos Cuautle to request the following Variances from Development Standards related to seeking approval for a walk-in cooler appliance on the exterior of the building at 902 Calumet Ave., Suite 1:

- Section 2.401 to allow a walk-in cooler appliance outdoors (front yard);
- Section 2.402(1)(C) to allow an 8ft tall fence;
- Section 2.402(C)(1) to allow a privacy fence vs an ornamental fence to screen the outdoor cooler appliance (all per drawings submitted).

Beth Shrader – At the previous meeting, the Board declared their intent to approve with certain written commitments. Since then, staff prepared Findings of Fact which were emailed to Board members. The written commitments of the Findings of Fact were read.

Per IC 36-7-4-1015, the owner of a parcel of real property may be required or allowed to make a commitment concerning the use or development of that parcel. Written commitments for this Petition follow:

- The petitioner shall cause the walk-in cooler to be removed from the site (location specifically identified in application submittal) when El Sabor Poblano c/o Carlos Cuautle is no longer a tenant at the site address identified on this document.
- The site shall be returned to its original condition upon removal of the walk-in cooler; this includes, but is not limited to, removal of the fence and providing an at-grade level pavement surface to match the surrounding grade and material.

The petitioner replied he understands and agrees with the written commitments.

**MOTION:** Paul Reed moved to approve VAR22-019 per Finding of Facts and the written commitment with the City. Diane Worstell seconded the motion and so approved with a 3-0 roll call vote.

**Roll Call Vote:**

Paul Reed – Yes

Bill Oeding –Absent

Mark Ribordy – Abstain

Diane Worstell – Yes

Kyle Yelton – Yes

**VAR22-016**

A petition filed by DVG Team, Inc. to request the following Variances from Development Standards related to a Drive & Shine Car Wash Facility project proposed at 2501 Calumet Ave:

- Section 3.505 to allow front yard building setback adjacent to the private road (north side of proposed Drive & Shine Car Wash) to be 3ft (building encroachment into setback per site plan submitted);
- Section 11.502(B)(1) to allow required building offset lengths to be less than 20ft (per site plan submitted);
- Section 11.506(A) to allow opaque (spandrel glass) windows to be included in transparency calculations and to allow tinted green glass on curtain wall framing, storefront windows, and storefront doors (per building elevation drawings submitted).

Prior to the meeting, the petitioner withdrew the variance requests from Section 11.502(B)(1) and Section 11.506(A), leaving only the variance request from Section 3.505.

Attorney Patrick Lyp – The Public Hearing is closed. Directions from the BZA were for staff to work with the petitioner to see if some compromises can be reached. Of the three variances requested two have been withdrawn. The City appreciates the flexibility of the petitioner on that. The third one – the one before the Board tonight – was not withdrawn. Between the requested variance to deviate 15’ and leave 3’ there was no ability to move on that one. He reached out to the attorney and advised him there would only be three voting members present tonight and that would require a unanimous vote to be approved. Attorney Lyp suggested the potential of this being continued to the next meeting where we have four available. The petitioner appreciated the option but his direction back to the Board was his client intends to move forward this evening. Based upon discussion, the application, the proposed Findings of Fact that were submitted by the petitioner, Beth and Jessica have circulated to the Board proposed Findings of Fact that, consistent with what was heard, there was a potential to deny the request. At this point the meeting is in the Board’s hands. If the Board has questions of staff they can pose them. If there are questions of the petitioner, they can pose those.

Beth Shrader – She wants to commend the design team on the revisions of the architecture that eliminated variances on the lube and everything on the car wash on State Road 2.

Paul Reed - Did you alter the building?

Russ Pozen – Yes. They changed the building completely to meet the ordinance from the bump outs, elevations, and style. What made the one variance a “no go” is that the wash system is a belt system and not a conveyor. With that type of system to get into the car wash you cannot have a vehicle come in cockeyed in any way. Previously they had the distance of the approach to get into the car wash approximately 30’ and that was not feasible. It needs to be a minimum of 45’ to make sure a vehicle can get straight and safely get into the conveyor otherwise it is not safe for the vehicle. With the bump out, that shifted the paved area to within a few feet of the property line. They need a retaining wall. It is not feasible to move the building to the mark that has been stated. They acknowledge and understand the guidelines Beth presented. For clarity, Lot 5 is about 28’. Set off of the existing curb with this style of building will be about 20’. It is outside of a large easement and he feels safe for the general public that travels this ingress private drive. There are enough hardships on this site with having three front yards to give the ability to the Board to see that this is a justified variance. His client has worked very hard to completely change the building to fit the style the ordinance requires. On the north side of town there is no car wash so the demographics of this area are underserved by not having a quality car wash with the indoor vacuum. Hopefully the Board can see fit to grant the variance.

Paul Reed – Is there anywhere else in Valpo that we have allowed this kind of 3’ allowance for the setback?

Beth Shrader – She did some historical research and cannot find any front yard setback variances for commercial properties. It is atypical and the setback that is standard for CG is less than many communities.

Paul Reed – What are those communities, 25’ and we are 15’?

Beth Shrader – We are 15’. 25’ is within the range of what we see in a lot of communities.

Paul Reed – He appreciates all the other variance items they have taken care of but there is still one that is one to be concerned about. They have made sure in the other developments that properties abide by the UDO to make sure it stays consistent. This is definitely not consistent.

Russ Pozen – In the UDO it is a grey area how to view this. In 3.505 there are no build to lines so this is an easement. Things go off the property lines. But he understands this is being treated as a right of way which is safe and fine. Going back to 3.505 there are no build to lines. He reads that and thinks you can get the building pretty close to the easement line and be acceptable per the ordinance. In reviewing all of those documents he thinks they are adhering to the intent of the UDO in this matter.

Paul Reed – Does staff see it this way?

Beth Shrader – No. If you took a strict interpretation that it doesn't matter that there is a public access easement that is 60' wide and there happens to be a water line very close to the edge of the utility and public access easement. If you measured from the centerline of the road which also happens to be the property line, that would allow for a building to be built on top of the curb. Clearly that is not the intent of the UDO. The UDO states that private roads should be built to the same standards as public roads even if they are never dedicated as such. With that guidance she feels very confident in her interpretation. It has been applied consistently while she has been here.

Diane Worstell – This sounds like a wonderful business. The description of it sounds like it is first class. She hopes there is some other place in Valparaiso where they can find a commercial site that would work. It would be a nice addition to the city. This lot just doesn't fit the bill. She apologized for all the work they have done. They have gone above and beyond.

**MOTION:** Diane Worstell moved to deny this request for a variance. Approval is based on it will not be injurious to the public health, safety, morals, and general welfare of the community. Two important purposes of setback requirements are to ensure structures are not placed too close to roadways (so as to impact the safe flow of traffic) and to allow for sufficient space for current and future utility needs. The petitioner indicated that the proposed structure cannot be reduced in size to make it fit on the existing parcels and comply with UDO setback requirements. BZA Board members questioned whether this structure (at its current size) is appropriate for the site. Based on the petitioner's application and presentation, the BZA was not convinced that allowing the significant reduction in the minimum setback requirement would not be injurious to public safety and general welfare. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. No material information was provided to the BZA on this requirement. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. (Note: The zoning ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by this subdivision.) The Valparaiso Board of Zoning Appeals disagrees. Specific findings: Consistent with judicial interpretation and although not exhaustive, in determining whether compliance with a zoning ordinance will result in practical difficulties in the use of the petitioner's property, the BZA looks to the petitioner to establish: (1) significant economic injury will result if the ordinance is enforced, (2) that the injury is not self-created, and (3) whether feasible alternatives exist. Based on the petitioner's application and presentation, the factual basis to support a finding of practical difficulty was not met. As was discussed during the petitioner's interaction with the BZA, it is the petitioner's proposed use and specific design specifications that necessitate the need for the variance. There are numerous other structures that could be placed on the parcels without need to vary the front yard setback requirements. The need for the variance is self-created and the BZA is of the opinion that alterations to the proposed plans could be made to allow for the planned use. Paul Reed seconded the motion. The motion passed with a 3-0 roll call vote.

**Roll Call Vote:**

Paul Reed – Yes

Bill Oeding – Absent

Mark Ribordy – Abstain

Diane Worstell – Yes

Kyle Yelton – Yes

**VAR22-017**

A petition filed by DVG Team, Inc. to request the following Variances from Development Standards related to a Drive & Shine Lube Center project proposed at 2511 Calumet Ave:

- Section 11.502(A) to allow bumpouts to not be required on the Lube Center building (2060 sq. ft.) (per site plan submitted);
- Section 11.506(A): to allow opaque (spandrel glass) windows to be included in transparency calculations; and to allow tinted green glass on storefront windows and storefront doors (all per building elevation drawings and elevation transparency table submitted).

Prior to the meeting, the petitioner withdrew this petition.

**VAR22-018**

A petition filed by DVG Team, Inc. to request the following Variances from Development Standards related to a Drive & Shine Car Wash Facility project proposed at 109 Porters Vale:

- Section 11.502(A) to allow uninterrupted horizontal dimension of approximately 80ft for the building (7,235.89 sq. ft);
- Section 11.502(B)(1) to allow required building offset lengths to be less than 20ft;
- Section 11.506(A): to allow opaque (spandrel glass) windows to be included in transparency calculations, to allow reduced required transparency along the primary façade (south, from 60% to 34%, to allow reduced required transparency along a non-primary façade (north, from 30% to 5%, and to allow tinted green glass on curtain wall framing, storefront windows, and storefront doors; and
- Section 5.303(E)(2)(a) to allow signage above the roof line.

Prior to the meeting, the petitioner withdrew this petition.

**NEW BUSINESS**

**VAR22-020**

A petition filed by Amanda and Shayne Snider. The property is located at 415 Madison Street in a Neighborhood Conservation (NC 60) Zoning District. The petitioner requests the following variance(s):

- Section 2.305(C)(1) – To allow an inground pool in a side yard (otherwise permitted behind the principal building).

Amanda Snider addressed the Board. They have submitted a drawing showing a pretty clear outline of the inground pool. It includes landscaping. The house is on the corner. The pool ends up being in the side yard instead of the back yard.

### **Public Hearing**

Suzette Sauriol - 512 Elmhurst Ave. She has concerns since the park is right there. The kids are always at the park. They have ginormous lights. She is concerned with the pool that the lights will be more illuminated. The noise. The kids at the top of the hill go sledding. She doesn't want to be too close and get in trouble. They have already taken trees down. She doesn't understand the value it is going to bring to her. If they start making concessions to them, then they will have to make concessions to everyone. She doesn't understand why they cannot follow the rules and make the pool smaller. She is sure they are going to have to have a privacy fence. There are so many kids around.

Seeing no one else wishing to address the Board, in person, by Zoom or electronically, Kyle Yelton declared the Public Hearing closed.

Shayne Snider - The trees that have been taken down are because they met with the City's arborists and he recommended which trees to take down because they were dying. Those are the only trees taken down. The arborist said he is going to take down a couple of trees. One is at Madison and Park that has an issue with the sidewalk. Their plan is this pool will have an auto cover. It will be landscaped. There will be retention walls. He does not think the illumination will be an issue.

Eric Tharp (pool contractor) - The way the pool was set up it is 4.5' lower than the grade. There probably will be lights to light up the pool deck. Everything is going to be shining down. The pool cover is an automatic cover and meets the safety requirements of the City of Valparaiso. Landscape is designed on the east side to block the park. The property to the south is not landscaped. It is screened and meeting the safety requirements.

Amanda Snider - There are three lots between the pool and the park.

Shayne Snider – We have teenage daughters. They use the sledding hill. The park will not be an issue. It is one of the things that they loved when they moved into the neighborhood. Their landscaping will beautify that area.

### **Questions/Comments from the Board**

Mark Ribordy – You have an automatic cover. A key has to be turned. Is there a fence?

Shayne Snider – No fence, just the cover.

Paul Reed – What is the city requirement for pools?

Beth Shrader – We use the State Building Codes standards. It is either have an automatic cover or a gate with a lock. It is about 150' from the park boundary to where the retaining wall that surrounds the pool is. She talked with the Park Department and they recommend that some landscaping be added towards the property boundary at the south to clarify what is private property and what is park. With other petitions in the past that has been a point of confusion in the neighborhood. That will be appreciated primarily by the petitioner but everyone will gain some clarity by it.

Paul Reed – So they do not own those four lots?

Shayne Snider – We do.

Beth Shrader – Technically it is just one lot. The pool is on the lot where the home is. All the open space south of the pool is a lot. It was originally subdivided as three lots which is the standard width for that neighborhood. There are various reasons why it was not developed so now it is just one lot. It is not uncommon to see owners of corner lots at the BZA for fences, pools and other things like that.

Shayne Snider – We would continue to landscape. We have been there just over a year and have landscaped the heck out of that home and will continue to do so.

Beth Shrader – Just for clarity, the variance is not for the size of the pool. It is not for a setback either. It is for the location. The pool is required to be in the rear yard. The rear yard is taken up by a garage. The proposal is to locate the pool in the side yard. It is defined as a side yard because they have their front door and take their address off of Madison. If they had taken their address off of Park, then this would be in the rear yard and would not require a variance.

Diane Worstell – Those automatic covers are nice. My daughter has one. A 250 lb. man can walk on that. It is very sturdy. You don't need a fence.

Paul Reed – The grade is 4.5' deep?

Eric – From Madison it is about 4.5'.

Paul Reed – The landscaping should help keep the noise down. Controlling the lighting will keep the neighbors happy.

Suzette Sauriol – She wants to make sure if the family goes in for lunch or something that the pool is safe. There are kids everywhere in that neighborhood.

Shayne Snider – He thinks part of their plan is to eventually have a fence around the whole area.

**MOTION:** Diane Worstell moved to approve variance VAR22-020. She feels granting this variance will not be injurious to the public health, safety, morals and general welfare of the community. The proposed variance, the pool location will be screened and private from the street and surrounding property. Access to the pool will be restricted by way of a mechanically operated power safety cover. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the proposed variance pool location would remain approximately 38' removed from the closest property line and approximately 95' from the closest resident. The location would also remain approximately 155' from the adjacent park. In addition, the proposed pool location would be screened and private from Madison Street. The strict application of the terms of the Zoning Ordinance will result in practical difficulty in the use of the property including the proposed variance because the space behind the principal structure is unavailable due to location of the existing driveway, coach house and garage house. Mark Ribordy seconded the motion. The motion passed with a 4-0 roll call vote.

**Roll Call Vote:**

Paul Reed – Yes

Bill Oeding – Absent

Mark Ribordy – Yes

Diane Worstell – Yes

Kyle Yelton – Yes

**VAR22-021**

A petition filed by Frederick Frey. The property is located at 3107 Churchview Drive in a General Residential (GR) Zoning District. The petitioner requests the following variance(s):

- Section 3.501(B)(Table 3.501) – To vary the required twenty-five (25) feet rear yard setback to allow for a fifteen (15) feet rear yard setback for the construction of a single-family home.

Frederick Frey – When he was looking for a piece of property in town, he saw the lot at Churchview and Sunflower. It met his requirements so he purchased it. He was given a plat showing the dimensions of his lot. At that time there was a side lot bordering on the west of 6' and on the north side of 8'. He designed a footprint within that. The design was denied because it was too close. After a couple of years, he came up with a compromise. He now has a rear setback of 16'. A couple of days after the Notice was sent to the newspaper, and letters sent to the homeowners, he decided the oak tree he was trying to save to enhance the green space should be removed. That is what opened up the space. He is now asking for a 16' setback. He feels this is a good compromise between the 25' requirement and what he is requesting. He was asked why he doesn't move the house closer to the street. The main part of the house is his floor space. He wants to be able to live on the first floor. To move it closer to Churchview would mean that the garage would now enter that living space. He wants to honor the original covenants and use the 25' setback for his garage to keep it in line with the others. The importance of having more of a front yard than a rear yard is because of the open space. If he went to a 25' setback he would lose that front yard space that extends diagonally from the



Churchview entrance The west side has a limited shared view of the side lots or rear lots because it really isn't a side lot and the neighbor has a fence along the entire east side of her property. The fence defines the space between her lot and his 16' space. He has a deck on that side. Keeping the house at 16' opens up the front space. A rear yard facing west has limited use. A 25' setback invites another use. One that he would not have. He would not have a pool or a trampoline or a chicken coop. For him it would be a space to have a grill and sit and have a beer with a friend.

### **Public Hearing**

Aris Psimos – 3108 Parker Drive. The main issue here is equity, being consistent, and applying covenants in a consistent manner for everybody. This is the last lot in that subdivision. Every homeowner has followed the covenants that were issued. For 36 years he had to walk in his garage sideways between two cars because he couldn't get an extra foot on either side. If he wanted a wider garage he would have to "L" his home and take 25' off his back yard. He had little kids and he wanted that back yard so they could go back there and play. When you are building a house you have the covenants and you have to make decisions. His house is unique in that subdivision because it has the same configuration as the house Mr. Frey will have. The front of his neighbor's house faces Sunflower. His back yard faces the east side of his house. The covenants say you need to have 25'. His neighbor's foundation to his lot line is exactly 25'. Then he built a 12' deck, which decreased the size between the deck and his house. Mr. Frey instead of the 25' that would go from the back of his house to Terry's lot line wants 16'. He wants to be 9' closer to her property line. Then he is going to build a deck 10'. It will be only 6' from the property line. He doesn't know how long the people will live in these houses, but the covenants guarantee that his neighbors don't encroach into his space. That is one of the main criteria homeowners look for. It would be a clear violation of the covenants. He has had a conversation with Mr. Frey. He is an upstanding citizen. He has been in Valparaiso forever. And he respects him. He has a dream about building this house with all of the green space. But the profound dynamic here is how will that infringe on the neighbor. If this variance is granted and if his neighbor sells his house that neighbor wants to extend the deck 10', would he be able to get that variance. If you looked at all of the corner lots you would not find any of them where you would have less than 25'. Most of the homes in Bullseye Lake Manor are back yard to back yard so there is 75'. But with my house and Mr. Frey's house it is unique because the back yard is very narrow. If the house were turned the other way it would fit. He told Mr. Frey to find a way to take 9' off the plan so the house fits. That would be the right thing to do.

Beth Shrader - We received a lot of public comments in advance of the meeting. So that everyone knows, the covenants are something that was established by the developer and the Property Owners Association. The property owners within the subdivision are the ones that enforce those covenants. The City has zero role in the enforcement of the covenants. What this Board and the City do is enforce the standards that apply throughout the city that are specific to subdivisions. The City's understanding is that Mr. Frey's petition meets covenants. What it does not meet are the Unified Development Ordinance standards for a rear yard. As

Mr. Frey said, he could move the home up 5' closer to the road and get a building permit for it because it would meet the UDO. However, then it would not meet the POA's covenants.

Terri Collins – she owns the home directly west of Fred's lot. Fred has every right to build a home on a lot he purchases. That is not the issue. The proposed variance would bring Fred's house 10' closer to her house leaving 15' instead of 25'. But you say that isn't relative now.

Beth Shrader – The 25' is from the UDO. The covenants have no standards for the setback on a corner lot. There are only standards for interior lots in the covenants for your subdivision.

Terri Collins – With the addition of a 10' patio it would leave just 6' between his home and her property line. Her concern is that the close proximity of his home and the collection of water that happens. There is always low sitting water. Those three lots seem to be the lowest in the subdivision. On that side of her lot is her master bedroom, two basement windows, a fireplace and a landscaped stone patio which is her back yard. That portion of her yard is in a constant state of saturation, it would affect her patio, foundation, fireplace and possibly flood the basement. She bases these concerns on the house that was built next to her within the guidelines. They built their home and her basement and backyard were flooded. She called City Hall. She talked with the builder. After spending several thousands of dollars on stone, dirt, landscaping and cleanup, further flooding was stopped. However, she still has water that collects between the two homes and after a decent rainfall one tree has died from the moisture and the sidewalk has shifted. Another objection to the variance is the impact on the value of her home. This is a home she has lived in for 30 years and it is a key investment for her. If you take two similar homes and one of them has a home just 6' away from the property line and one has one that is 25' away, which home do you think is going to retain its value more. The variance has the potential to decrease the value of her home. We are talking 16'. With the proposed 9' patio it is just 6' away from her home. As a nurse who has abided by the 6' rule for the past three years, 6' is nothing. Fred's variance should not be granted because of a want. His first want was he wanted a panoramic view. His second time was he wanted to save the oak tree. He has admitted a home will fit on the lot without the variance. But that is not what he wants. She feels with the potential of damage to her home and her resale value on her house, that his "want" should not outweigh that. She should be protected as a property owner from him causing potential damage to her property.

John Fraley – 3107 Parker and owns 3103 Parker. One of the strengths of our nation is compromise. He has listened to his neighbors as they object to this construction. He understands the definitions. In a business there are two aspects, passion, and value. What will be shared in a neighborhood once this construction has begun will be the absence of a cottonwood tree which is a great annoyance. You will get much love and satisfaction from neighbors with the absence of just that one tree. There are at least 20 trees on this property. Earlier there was reference to green space. Common sense tells us there might be one or two trees left when the construction is finished.

Eileen Piehl – 306 Sunflower. It has been stated everyone has followed the rules to date. She lives across the street. She has put an addition on her home. She wants to know what this would do going forward for people who currently own or will own homes there. Will this be a precedent for someone deciding to put an addition on? It has been talked about this is a precedent for the ones already built but this will be the last one. Does this change anything as far as property law for people wanting to put additions on? If people come in and want to put an addition on, do they still have to abide by the building codes? When she learned the property was sold she and a neighbor joked that the only thing that would fit is a “little” house. She lives across and sees how narrow the piece of property is.

Tom Krueger – 601 Erie Street. He is a friend and former neighbor of Fred. Variances are made for one reason - when you have a non-conforming piece of property. It is impossible in this world to try to make a law that covers every single item. That is why there is this Board and why there is government that oversees us. All he asks is that the Board look at this. There is a house that sits next door at 8’ and then on the other side is a house at 25’. It is different. It is not the same. The use is good. This will bring value to the neighborhood. From a dollar standpoint it is an attribute and the neighbors should welcome him. From a setback standpoint this is a conundrum that is non-conforming. From the water aspect he knows Fred has met with Matt Zubriggen of the Engineering Department and has talked about how to fix that not just for himself but for his neighbors. He is ready to help and fix a problem that no one else has for years.

Cynthia Herrold - 304 Sunflower Drive. All of the residents have followed the same for their homes. Why does this have to be a slap in the face to them?

Ann Brugos – 653 Glendale. She is Fred’s daughter. She appreciates the concern of the neighbors. She understands most of the homes were built prior to the UDO. So the rules neighbors have followed are the covenants. These could have been 8’ on the north lot line and 6’ on the west. So Fred would have been following the covenants. Then all of a sudden there was the UDO. From a practical standpoint, he wants his living unit to be on the main floor. To have that with the garage it would be squeezing the footprint to have 25’ setbacks on three sides of this lot. This would put all the bedrooms on the second floor. It would be a different house. It would be a full two story instead of a cape cod. It would be very prominent as you pull into the subdivision. The lot will get built eventually. She loves trees but this will not be a green space forever.

Terri Collins – Her concern is about the expense to her – the potential decrease in the value of her home. She has incurred expenses already. She obtained a survey on her lot. She incurred the expense of moving her fence 6” at the request of Mr. Frey. Plus she has incurred attorney fees. She is worried with the variance that she is going to have damage to her home and her investment that she has paid on for 30 years is going to decrease in value.

Diane Worstell – She asked for clarification on moving her house 6”.

Terri Collins – She explained it was her fence and it was done at the request of Mr. Frey. She did it without argument. It was over the property line. But this variance impacts her. It has the potential to really impact her home.

By email – William Meeker 3109 Churchview - attended the meeting in person. His questions have been brought up.

Seeing no one else wishing to address the Board, in person, by Zoom or electronically, Kyle Yelton declared the Public Hearing closed.

Fred Frey - He appreciates Terri's concerns about the losses she had from water damage. That could have been solved a few years ago. A few weeks ago the City Engineer came out and he said it is a simple fix. You just put a drain there. If three or four property owners got together it would probably be \$1,000 each and the water problem would be solved. About a year or two after he bought the property, he took pictures of water pooling on her property and into his yard and another neighbor. A good deal of the problem would be solved by a simple drain. His daughter on Glendale had a problem. She asked the City to fix it and they put in a drain at the City's expense. There are two cottonwood trees. In Kansas they call that summer snow. He does not think neighbors will mind those trees going. If he gets to build this house the very prominent view will change. Most of the trees will go. But there will be many trees planted to buffer the headlights coming in from Churchview. By allowing the house to go back 9' opens up the front yard. There would be a nice green space. The side yard seems to be an issue. Terri says the value of her house will go down because of the water damage. But all in all property values will be enhanced by what he is proposing and make a beautiful entrance into that subdivision. It is not a showy house. It is not screaming for attention. There won't be any Greek columns. But it recedes back into the corner in an unassuming way and frames the space. When viewed from Churchview and Sunflower it doesn't look wider than any of the other houses there. If viewed from a diagonal it looks larger than it is. The first floor is approximately 1,800 sq ft and the second floor is approximately 1,000 sq ft. As his daughter said, if one were to build a house within the 25' setbacks that would be an easy way out for a builder. What he proposes seems to fit. He invited the Board to look at the model. He has two porches.

### **Questions/Comments from the Board**

Beth Shrader – In terms of precedent for additions, that is something the Board is always concerned about – setting a precedent. Anyone who wanted to violate the standards in the UDO would have to come before the Board whether or not this variance is granted. Before the UDO there were city standards. They were just in the Zoning Ordinance. It is not as if the covenants were all that existed prior to the UDO. The covenants match the prior zoning. The UDO has updated the expectations citywide. The Engineering Department has made a visit out to the site. They observed the ponding. They observed that a neighbor is emptying a sump pump onto this lot. The drainage expectations for any lot that is developed in the city is that you are not shedding water within 10' of your neighbors' property. For this one in particular the

Engineering Department expects that the drain be installed. It doesn't matter if it is installed by Mr. Frey or jointly by all the property owners. It is the expectation that that infrastructure is installed and would be required as part of any site permits issued for this development. This is regardless of this variance being granted.

Paul Reed – He asked Beth to explain the deck being put within the 6'.

Beth Shrader – Decks can be 3' from the property line. The deck does not require a variance. In this case you cannot build a deck over an easement. That is why the 6' is required for this lot.

Paul Reed – He asked Mr. Frey the size of his house.

Fred Frey – 1,800 sq ft on the first floor and approximately 1,000 sq ft on the second.

Paul Reed – Is this a stock set plan that you bought?

Fred Frey – No. It is a design he came up with. Another owner might just buy a stock plan and set it within the setbacks. His plan fits the lot nicely. If he did not build on the lot there is water that pools around there. That too affects his property value. That should have been fixed by the owners who are dumping their sump pump water there.

Diane Worstell – She asked Terri about the survey. How close is her house to the fence that separates the lots?

Terri Collins – She provided the survey.

Diane Worstell – She remembers when Dr. Frey was before the Board three or four years ago. Tyler Kent found over a dozen houses that were closer to the side yard than what Dr. Frey is asking for 16'.

Beth Shrader – The question is that a setback is different for a side yard than a rear yard. The variance you are requesting is for the rear yard setback not the side yard.

Fred Frey – He will be 6' from Terri's side lot and 8' from Mr. Meeker's side lot. There is no mention in the covenants of a corner lot having a rear lot and rear lot setbacks. He has found a compromise between 6' and 25' and he is asking for 16'. Many of the homes are abiding by the old plat covenant and would be non-conforming today. He feels what he is asking for is reasonable.

Mark Ribordy – If the house were turned it is not an issue? The covenants do not cover the corner lots.

Fred Frey – He invited anyone who has reservations to look at the layout he has. Look at the side yard and the front yard. He is a tree planter. He has completely relandscaped his property on Washington street. He will do the same here. It will look nice.

Paul Reed – If you stick with the covenant, it is 25' (front yard setback). If you could go 20' (front yard setback) you are picking up 5'. He is not sure it would be noticeable from the road because it is just a garage front. Then you could slide the whole thing over and would then have a 21' rear yard.

Fred Frey – It would look like hell. It would be the first thing you see. It would be out front of all the other houses and garages. It would also negate the green space in front of the house which is important. Dr. Spitler when they platted that area wanted that to remain a green space entry into the subdivision. The neighborhood expects that to be a green space. He would like to continue that type of thinking. Driving in from Churchview when you face that corner you don't want to see the house immediately. The house will set back and the green space will be out front. It will be a new kind of green space. He is removing trees and regrading and will replant. This will solve water problems for him.

Mark Ribordy – It is the front of the house you are worried about lining up with the other houses? Are you trying to line the house up with those on Churchview or Sunflower?

Fred Frey – If you look at Mr. Meeker's house. His garage sits in front of the main body of his house. If you push this forward to Churchview he does not think it will look good. He is an artist who is used to dealing with three dimensional things. He doesn't know what the advantage is. To solve a perceived water problem between this house and Terri's? She feels the house would be devalued by water problems. The problem could be solved easily.

Mark Ribordy – What we are looking for is a compromise to the 25' in the back yard which is kind of the side yard if it were turned the other way.

Ann Brugos – 653 Glendale. Fred's concern is cars come in and the more space he can put between himself and that corner the more that can be planted there to screen it. The side yards are an issue because it is a corner lot. He wants as much landscape out front as possible. This is the reason he does not want to push it back.

Kyle Yelton - He understands but is trying to find middle ground.

Mark Ribordy – The issue is that it is a corner lot.

Fred Frey – Whoever builds on this lot, the trees will go. He his trying to get space to plant more trees. This will enhance everything. To devalue Terri's property would devalue his.

Beth Shrader – The reason we still maintain a rear yard requirement for a corner lot is that there are certain expectations property owners have about things they can do with rear yard.

For example – put sheds, play structures and all sort of things. Even though this is not an expectation of Mr. Frey's, subsequent owners might. That is why there is 25' as the requirement and it is not simply two side yards.

Beth Shrader – The Board has the option to table a matter if no one is ready for a motion.

**MOTION:** Paul Reed moved to deny VAR22-021 per the Findings of Fact. Kyle Yelton seconded the motion. The motion passed with a 4-0 roll call vote.

**Roll Call Vote:**

Paul Reed – Yes                      Bill Oeding –Absent  
Mark Ribordy – Yes     Diane Worstell – Yes  
Kyle Yelton – Yes

**VAR22-022**

A petition filed by Valparaiso Exterior Designers. The property is located at 2607 Kieffer Court in a Suburban Residential (SR) Zoning District. The petitioner requests the following variance(s):

- Section 3.501(B)(Table 3.501) – To vary the required thirty (30) feet rear yard setback to allow for a twenty-three and a half (23.5) feet rear yard setback for the construction of a sunroom.

Dave Jones of Exterior Designers. They are proposing to build a sunroom on an existing deck. The deck is 12' X 16'. They are taking 2' off the side so they are not encroaching any further that what is currently there. He understands this originally was a 25' setback and revision to the ordinance increased it to 30'. It is not blocking views of any property. They are not building any further so it is not encroaching. Basically it is adding value to the home.

Steve Lawson (homeowner) – Restated they are taking an existing deck and converting it into a sunroom.

**Public Hearing**

Seeing no one wishing to address the Board, in person, by Zoom or electronically, Kyle Yelton declared the Public Hearing closed.

**Questions/Comments from the Board**

Mark Ribordy – This is an existing structure, and you are asking for 1.5' off.

Dave Jones – It used to be 25' and now it is 30'. We are asking for a 23.5' rear yard setback for the sunroom.

Beth Shrader – The petitioner recently presented revised Findings.

**MOTION:** Paul Reed moved to approve VAR22-022. Mark Ribordy seconded the motion. The motion passed with a 4-0 roll call vote.

**Roll Call Vote:**

Paul Reed – Yes

Bill Oeding –Absent

Mark Ribordy – Yes

Diane Worstell – Yes

Kyle Yelton – Yes

**OTHER BUSINESS**

**Introduction of New Member**

New member Mark Ribordy introduced himself. He moved here 30 years ago. He had his own business and has sold it. He now is a boat captain. He does delivering, chartering, and brokering.

**Election of Officers**

**MOTION:** Paul Reed moved to nominate Kyle Yelton as President. Mark Ribordy seconded the motion. The motion passed with a 4-0 voice vote.

**MOTION:** Kyle Yelton moved to nominate Paul Reed as Vice President. Mark Ribordy seconded the motion. The motion passed with a 4-0 voice vote.

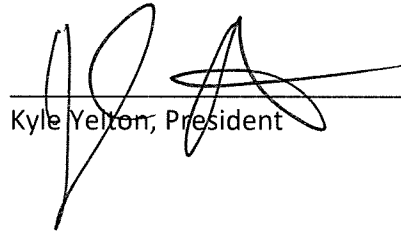
**ADJOURNMENT**

**MOTION:** Paul Reed moved to adjourn the meeting. Mark Ribordy seconded the motion and so approved with a 4-0 voice vote.

**NEXT MEETING:** February 15, 2023, 5:30 p.m.



Beth Shrader, Executive Secretary

  
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Kyle Yelton, President