

**ADVISORY BOARD OF ZONING APPEALS**  
**ADMINISTRATIVE APPEAL APPLICATION PACKET**



AUG 09 2012

**APPLICATION**

DOCKET #: 2012-05B2A / B2AA-8-12-1111      DATE RECEIVED: 8/9/12  
 APPLICATION FEE: \$ 100      RECEIPT #: 3536  
 PROPOSED SUBDIVISION: \_\_\_\_\_

**COMPLETE THE FOLLOWING**

1.	<b>APPLICANT INFORMATION</b>		APPLICANT NAME: <u>DAVE HATHAWAY</u>	PHONE: <u>509.0121</u>		
	MAILING ADDRESS:	<u>19 CARNABY CT. BROWNSBURG</u>				
	EMAIL ADDRESS:	<u>dshatha@us.ibm.com</u>				
	APPLICANT IS (CHECK ONE)	<input type="checkbox"/> SOLE OWNER	<input checked="" type="checkbox"/> JOINT OWNER	<input type="checkbox"/> TENANT	<input type="checkbox"/> AGENT	<input type="checkbox"/> OTHER (SPECIFY)
2.	<b>PROJECT CONTACT</b>		CONTACT NAME: <u>DAVID DYGERT</u>			
	PHONE: <u>710.2148</u>	FAX:	EMAIL ADDRESS:			
	<b>OWNER INFORMATION</b>		OWNER'S NAME: <u>DAVE HATHAWAY</u>	PHONE: <u>509.0121</u>		
	MAILING ADDRESS:	<u>19 CARNABY CT. BROWNSBURG</u>				
	EMAIL ADDRESS:	<u>dshatha@us.ibm.com</u>				
4.	<b>AGENT INFORMATION</b>		COMPANY NAME:	CONTACT NAME:		
	AGENT ADDRESS:		CITY:	STATE:	ZIP:	
	PHONE:	FAX:	EMAIL ADDRESS:			
	<b>PROPERTY LOCATION</b>		CHECK ONE: <input checked="" type="checkbox"/> RESIDENTIAL <input type="checkbox"/> NON-RESIDENTIAL <input type="checkbox"/> OTHER (SPECIFY)			
6.	LEGAL DESCRIPTION: (SEE ATTACHED DESCRIPTION & MAP)		<u>LOT 214</u> <u>NORTHRIDGE SECTION 11</u>			

# ADVISORY BOARD OF ZONING APPEALS

## ADMINISTRATIVE APPEAL APPLICATION PACKET

7.	PARCEL NUMBER(S): (THE COMPLETE PARCEL NUMBER FOR EACH PARCEL IS REQUIRED)		LOT 214 NORTH RIDGE SECTION 11																		
8.	PROPOSED NAME OF SUBDIVISION PLAT:		NORTH RIDGE ESTATES																		
9.	DESCRIBE THE PROPOSED PROJECT:		LANDSCAPING WITH ROCK BORDER, PLANTS, & PERGOLA - SEE ATTACHED																		
10.	PRESENT ZONING:	R1	PRESENT USE:	RESIDENTIAL																	
11.	ACREAGE:	.61	CIVIL TOWNSHIP: Choose an item.	SECTION #:	TOWNSHIP #:	RANGE #:															
			LINCOLN																		
12.	PROPOSED OPEN SPACE %:	ACREAGE OF OPEN SPACE:		MILES OF PUBLIC DEDICATED STREETS (NEW):																	
13.	SURROUNDING PROPERTIES:	<table border="1"> <thead> <tr> <th></th> <th>NORTH</th> <th>SOUTH</th> <th>EAST</th> <th>WEST</th> </tr> </thead> <tbody> <tr> <td>ZONING:</td> <td>Choose an item. R1 / Hendricks</td> <td>Choose an item. R1 / Hendricks</td> <td>Choose an item. R1</td> <td>Choose an item. Hendricks</td> </tr> <tr> <td>USE:</td> <td>Residential</td> <td>Residential</td> <td>Residential</td> <td>AGR</td> </tr> </tbody> </table>						NORTH	SOUTH	EAST	WEST	ZONING:	Choose an item. R1 / Hendricks	Choose an item. R1 / Hendricks	Choose an item. R1	Choose an item. Hendricks	USE:	Residential	Residential	Residential	AGR
	NORTH	SOUTH	EAST	WEST																	
ZONING:	Choose an item. R1 / Hendricks	Choose an item. R1 / Hendricks	Choose an item. R1	Choose an item. Hendricks																	
USE:	Residential	Residential	Residential	AGR																	
14.	<b>IDENTIFY THE UTILITIES TO SERVE THIS DEVELOPMENT</b>																				
	WATER: Choose an item.	SEWER: Choose an item.	ELECTRICITY: Choose an item.	NATURAL GAS: Choose an item.																	
	Town	Town	Duke	Vectran																	

**ADVISORY BOARD OF ZONING APPEALS**  
**ADMINISTRATIVE APPEAL APPLICATION PACKET**

15. **APPLICATION NOTARIZATION**

THE ABOVE INFORMATION AND ATTACHED EXHIBITS, TO MY KNOWLEDGE AND BELIEF, ARE TRUE AND CORRECT, AND IN COMPLIANCE WITH THE SUBDIVISION CONTROL & ZONING ORDINANCE OF THE TOWN OF BROWNSBURG, IN.

*David Hathaway* , 8.9.12  
SIGNATURE OF APPLICANT , DATE

DAVE HATHAWAY 8.9.12  
PRINT NAME DATE

STATE OF IN )  
COUNTY OF Hendricks SS:

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED DAVID HATHAWAY, WHO ACKNOWLEDGED THE EXECUTION OF THE ABOVE AND FOREGOING INSTRUMENT TO ITS VOLUNTARY ACT AND DEED ON THE 9<sup>th</sup> DAY OF August, 20 12.

5-5-2019  
COMMISSION EXPIRATION DATE

*Meegan Morgan*  
NOTARY

Hendricks  
COUNTY OF RESIDENCE

Meegan Morgan  
PRINTED NAME

## Summary of Administrative Appeal

Homeowner is requesting an exception to section 155.033 (G) (12) of the Brownsburg Code of Ordinances. Homeowner has erected a minimal "structure" called a pergola to enhance a newly landscaped area in the back yard. The pergola is within a landscaped area which includes multiple plantings and is surrounded by boulders and a stone border. Homeowner is requesting this exception based on the belief that the pergola would be viewed more as a landscaping feature than a traditional structure. The top of the pergola has decorative boards which allow sunlight and rain to penetrate to the ground below.

The landscaping project was nearly complete before it was brought to the attention of the homeowner that the pergola may violate the town ordinances. The homeowner believes that the pergola represents no hazard to the surrounding area and that the appearance is tasteful and consistent with pre-existing landscaping.

The landscaping project was designed and installed by a professional , David Dygert, who has been in the landscaping business for 26 years in the Brownsburg area.

See attached photos of the nearly finished project.







ENGINEERING at SUGAR HUB  
100 Airport Road, Suite 100 - Brownsburg, Indiana 46112  
(317) 852-5695 • FAX 852-5617

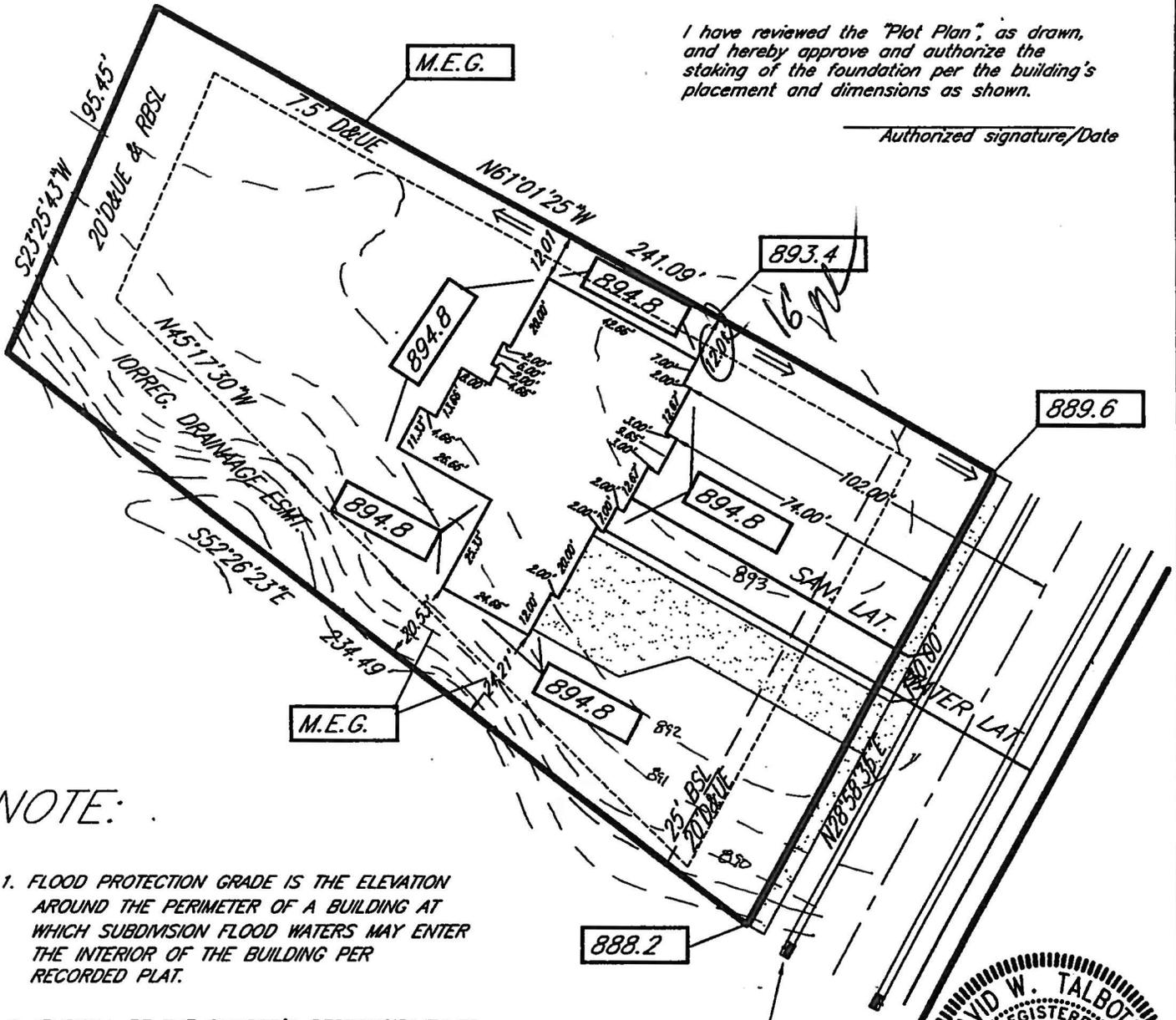
CONSULTING,

**PREPARED FOR:**  
PGL ENTERPRISES INC.  
8520 WILLIAMS COVE CT.  
INDIANAPOLIS INDIANA

**PLOT PLAN:**  
LOT 214 NORTHTRIDGE SEC. 11  
CARNABY COURT  
BROWNSBURG INDIANA

I have reviewed the "Plot Plan", as drawn, and hereby approve and authorize the staking of the foundation per the building's placement and dimensions as shown.

Authorized signature/Date

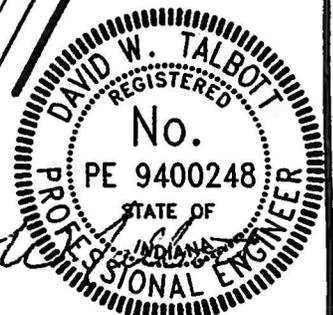


**NOTE:**

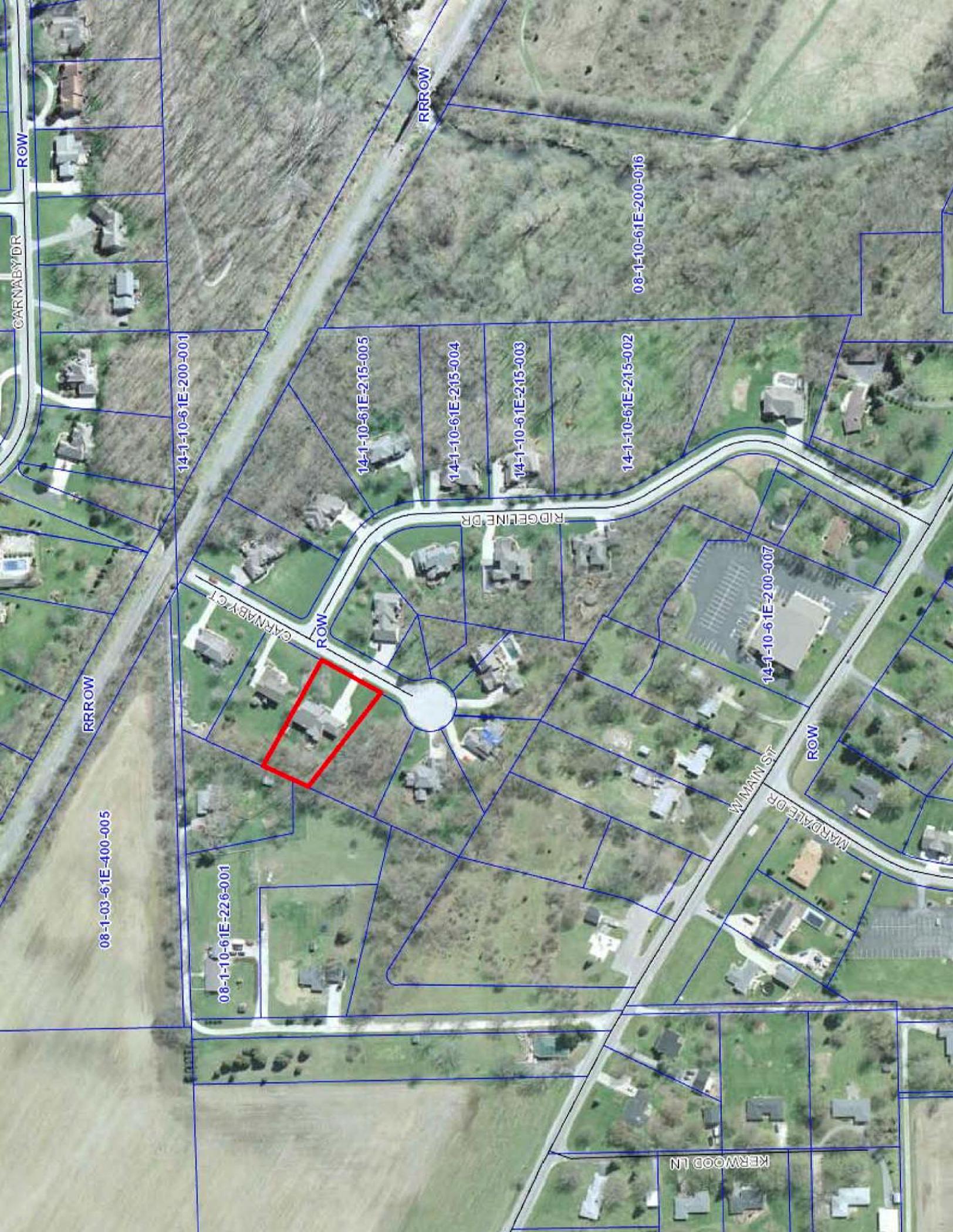
1. FLOOD PROTECTION GRADE IS THE ELEVATION AROUND THE PERIMETER OF A BUILDING AT WHICH SUBDIVISION FLOOD WATERS MAY ENTER THE INTERIOR OF THE BUILDING PER RECORDED PLAT.
2. IT SHALL BE THE BUILDER'S RESPONSIBILITY TO ASSURE THAT THE RESIDENTIAL STRUCTURE SHOWN, AND ANY ACCESSORY BUILDINGS WHERE APPLICABLE, HAVE BEEN POSITIONED AND PLACED ON THE LOT WHERE SOILS HAVE BEEN PROPERLY COMPACTED TO ACCOMMODATE SUCH STRUCTURE(S). BENCHMARK CONSULTING, INC ASSUMES NO LIABILITY WITH REGARD TO SOILS COMPACTION.
3. BUILDING CONTRACTOR SHALL CONFIRM ALL SITE DATA PRIOR TO ANY CONSTRUCTION. ANY DISCREPANCIES SHALL BE REPORTED TO

TBM  
STORM STR # 42  
TC = 887.96

*David W. Talbott*



I, DAVID TALBOTT,  
duly licensed PROFESSIONAL ENGINEER, Indiana  
No. PE 9400248, do hereby certify that in my



ROW

CARNABY DR

RRROW

08-1-10-61E-200-016

14-1-10-61E-200-001

14-1-10-61E-215-005

14-1-10-61E-215-004

14-1-10-61E-215-003

14-1-10-61E-215-002

RIDGEVINE DR

CARNABY CT

ROW

14-1-10-61E-200-007

RRROW

08-1-03-61E-400-005

08-1-10-61E-226-001

MAIN ST

ROW

MARDALE DR

KERWOOD LN

# Memo:

---

To: Board of Zoning Appeals  
Cc: Tricia Leminger, Dave Hathaway  
From: Todd A. Barker, Director of Planning  
Date: September 24, 2012  
Re: BZAA-8-12-1111 Dave Hathaway – Administrative Appeal

---

The Administrative Appeals process is typically the least common process the Board of Zoning Appeals reviews. Therefore we have included the following excerpt from the Zoning Ordinance that outlines the purpose of the Administrative Appeals process.

*§ 155.039 APPEALS.*

*(A) Purpose.*

*(1) The appeal procedure is provided as a safeguard against arbitrary, or erroneous administrative decisions. It is intended to avoid the need for legal action by establishing local procedures to review and correct administrative errors. It is not, however, intended as a means to subvert the clear purposes, meanings, or intent of this chapter or the rightful authority of the Administrator to enforce the requirements of this chapter. To these ends, the reviewing body should give all proper deference to the spirit and intent embodied in the language of this chapter and to the reasonable interpretations of that language by those charged with the administration of this chapter.*

*(2) The filing of an appeal shall stay all proceedings in furtherance of the action appealed from, unless the Administrator certifies to the Board of Zoning Appeals, after the notice of appeal has been filed, that by reason of facts stated in the certificate, a stay would cause, in his or her opinion, imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order that may be granted by the Board of Zoning Appeals or by a court of record, on application, of notice to the Administrator and on due cause shown.*

*(3) The Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify the order or final decision as in its opinion ought to be made in the premises, and to that end has all the powers of the officer from whom the appeal is taken.*

*(B) Authority. The Board of Zoning Appeals shall hear and decide appeals from, and review orders, decisions, determinations, or the failure to act, of the Administrator acting pursuant to his or her authority and duties under this chapter and to that end the Board of Zoning Appeals shall have the same powers and be*

*subject to the same standards and limitations as the Administrator with respect to any order, decision, or determination being appealed.*

*(C) Parties entitled to appeal. Appeals to the Board of Zoning Appeals concerning the interpretation or administration of this chapter may be taken by any persons aggrieved or affected by any decision of the Administrator.*

The following facts, analysis and conclusions have been prepared in reference to Board of Zoning Appeals case number BZAA-8-12-1111, an Administrative Appeal filed by Dave Hathaway (the “Petitioner”) whose address is 19 Carnaby Court, Brownsburg, Indiana 46112, to appeal the determination of the Building Commissioner and final decision by the Administrator that a pergola is considered an Accessory Structure pursuant to §155.011 of the Brownsburg Zoning Ordinance (the “Ordinance”), entitled ‘Zoning Definitions’, therefore requiring a Improvement Location Permit to be issued pursuant to §155.033(G)(12) of the Ordinance.

### **FACTS**

- (1) The Petitioner’s property is currently classified by the Ordinance as *R-1 Residential District*.
- (2) The Petitioner constructed a pergola (the “Structure”) on his property without first receiving an Improvement Location Permit (the “Permit”).
- (3) During the construction of the Structure the Town of Brownsburg Planning & Building Department received numerous inquiries from neighboring property owners regarding said Structure.
- (4) Upon review of the Structure, relevant portions of the Ordinance and International Residential Code<sup>1</sup> (the “IRC”), and a site visit on the property, the Building Commissioner made a determination that the Structure required a Permit to be constructed pursuant to §155.033(G)(12) of the Ordinance, entitled ‘*Structures other than buildings*’.
- (5) Upon review of the determination of the Building Commissioner, the Administrator made a final decision, based upon the following terms and definitions, that the Structure required a Permit to be constructed pursuant to §155.033(G)(12) of the Ordinance.
  - (a) Section 155.011 of the Ordinance contains the following definitions as used therein:
    - (1) “*ACCESSORY STRUCTURE. A structure subordinate to and located on the same lot as the principal structure, and which does not change or alter the character of the premises and which is not used for human occupancy.*”

---

<sup>1</sup> The Preface of the IRC Code and Commentary, Vol. 1 states “*The Commentary is advisory only; the code official alone possesses the authority and responsibility for interpreting the code.*”

- (2) *“ACCESSORY USE. A use subordinate in area, extent and purpose to the principal use, that contributes to the comfort, convenience or necessity of the principal use, and that is located on the same lot and in the same zoning district as the principal use.”*
- (3) *“IMPROVEMENT LOCATION PERMIT. A certificate issued under this chapter, permitting a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure within its jurisdiction, or cause the same to be done or to change the condition of the land.”*
- (6) On or about July 26, 2012 David Dygert, contractor, applied for a Permit on behalf of Petitioner in compliance with the Ordinance. Upon review, the Building Commissioner determined that a Permit could not be issued, as the Structure did not meet the required R-1 *Side Yard Setback* of fifteen (15) feet.
- (7) On August 9, 2012 the Petitioner filed an Administrative Appeal, to reverse the decision of the Administrator, in paragraph (5) above.
- (8) Petitioner contends that “the pergola [is] viewed more as a landscaping feature than a traditional structure” and “[it] represents no hazard to the surrounding areas and that the appearance is tasteful and consistent with pre-existing landscaping.”

### **ANALYSIS**

In order to determine when “Structures other than Buildings” require a Permit an interpretation of the Ordinance is required. First, we asked, is a pergola a structure? Based on a review of the IRC definitions a ‘Structure’ is:

*“That which is built or constructed.”*

The commentary of this definition further states:

*“This definition is intentionally broad so as to include within its scope – and therefore the code – everything that is built as an improvement to real property.”*

Based on the IRC definition we determined that a pergola is a structure, however further clarification was needed as to the classification of this structure. In terms of the Town of Brownsburg Zoning Ordinance we categorize structures into ‘Primary Structures’ and ‘Accessory Structures’. Therefore we also reviewed the IRC for the definition of an ‘Accessory Structure’.

*“A structure not greater than 3,000 square feet (279 m<sup>2</sup>) in floor area, and not over two stories in height, the use of which is customarily accessory to and incidental to that of the dwelling(s) and which is located on the same lot.”*

The commentary section of the IRC for ‘Accessory Structure’ further goes on to state:

*“As it applies to the scope in Section R 101.2, this term describes structures that are designed for accessory use to one- or two-family dwellings and multiple single-family townhouses. These structures are commonly used as garages, carports, cabanas, storage sheds, tool sheds, playhouses and garden structures. The structures all house uses that are incidental to the primary use, which is the dwelling unit, and the activities that take place in accessory structures occur as a result of the primary building. Their use is secondary or minor in importance to the primary residence.”*

Section R 101.2, as cited in the aforementioned *commentary* states:

*“The provisions of the International Residential Code for One and Two Family Dwellings shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwelling and townhouses not more than three stories above-grade in height with a separate means of egress and their accessory structures.”*

Based on the definitions above staff has determined that a pergola is an accessory structure but not an accessory building. Upon reviewing the Zoning Ordinance, staff identified that item (12) “Structures other than buildings (including satellite dish, towers, antennas)” of the Schedule of Permits, is the applicable category for a pergola. Like many of the definitions in the International Residential Code this section of the Zoning Ordinance is broad in its scope therefore, staff utilizes the following tests to determine the need for a permit:

1. Does the structure have or require a footing and/or foundation,
2. Does the structure have or contain overhead members that carry a Load<sup>2</sup>,

In both cases staff determined that Mr. Hathaway’s pergola met these tests, it does have a footing and the overhead members carry some of the structural load.

### **CONCLUSIONS**

Based upon the foregoing Facts and Analysis it is the determination of Staff that an Improvement Location Permit is required to construct this Accessory Structure, pursuant to the cited Code(s) and Ordinance. This matter now comes before the Board of Zoning Appeals to be heard and decided.

---

<sup>2</sup> Loads. Forces or other actions that result from the weight of building materials, occupants, and their possessions, environmental effects, differential movement and restrained dimensional changes. Permanent loads are those loads in which variations over time are rare or of small magnitude, such as dead loads. All other loads are variable loads[.] Chapter 16, Section 1602.1 ‘Definitions’, 2006 International Building Code.