

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

**22-W-VAR-18**    **LAND USE VARIANCE**  
Anthony Agular  
South side of 200N, 800' east of 450E

**AUGUST 23, 2022**  
**AGENDA ITEM:**

**SUMMARY OF PROPOSAL**

Current zoning: AG, Agricultural

Property area: 10.0 acres

The petitioner, owner of the subject property, is requesting a land use variance to permit a defined Major Residential Subdivision use on the property located on the south side of 200 North, about 800' east of 450 East, west of the petitioner's residence under construction, in Section 32 of Smith Township.

Proposed is the use of the petitioner's 10-acre parcel for non-agricultural purposes; specifically to construct one single-family dwelling. This is a remainder of an 18± acre parcel that the petitioner acquired in 2021 and from which have already been platted two 3.9-acre parcels (as "Birchwood Acres"). If this variance is granted, the petitioner would reconfigure the two lots in Birchwood Acres and replat it as a 3-lot subdivision.

**PROPERTY HISTORY, CODE APPLICATION, AND NEED FOR VARIANCE**

The Subdivision code requires that any new parcel under 20 acres in area split from a 1979 parent tract will require platting, with several exemptions. That parent parcel was approximately the northwest quarter of Section 32 lying north of SR 205, totaling about 104 acres.

20 acres was split off in 2017 and subsequently platted in 2018 as the 2-lot Hinds Homestead. 25 acres at the southern point was also split in 2017. This left a 58± acre parcel as of the end of 2018.

That parcel of 58± acres was sold in three parts in 2021: a 12-acre property at the southeast corner of 450 East and 200 North, the 18-acre property acquired by the petitioner, and a 28.72-acre property to the east of the petitioner's property. The 12-acre property did not require platting as the "first free sale" split and the 28.72-acre property was exempt from platting as it was over 20 acres. The petitioner's property then required platting as it was under 20 acres unless it was for agricultural use only.

In 2018, the zoning code was amended to create a definition of "Major Residential Subdivision," which is a platted subdivision of 3 or more lots as of September 2018 or a cumulative 3 or more lots split from a tract as it existed in September 2018. Major Residential Subdivisions are not permissible in the AG district, making it necessary to rezone any time a third (or more) residential lot is proposed to be platted from the 2018 tract.

The petitioner sought to plat the 18 acres into four lots in late 2021, and filed a rezoning to RR, Rural Residential. This rezoning was turned down due to RR allowing more intense development, although that was not what was proposed at the time. The petitioner revised the plat to be two lots with the 10-acre remainder, which did not require rezoning, and that plat was recorded earlier in 2022. Residences are now under construction on each platted lot.

Since the subdivision platting, the petitioner sought to sell the 10-acre remainder for non-residential purposes in order to maintain its compliance with the subdivision exemption, but, as described in the submitted letter, that effort was not successful. After the waiting period for refiling rezonings, he filed for rezoning for the 10-acre parcel, with a commitment that no more than one lot would be platted. The Plan Commission considered this request at their July meeting, but even with the proposed commitment, they

found it difficult to make a recommendation due to the potential uses and development permissible under RR.

The Commission suggested that instead of a rezoning, a land use variance to permit the third platted lot in AG may be more appropriate, which is the request brought to the Board.

### **LAND USE VARIANCES**

Land use variances are permitted under Indiana Code §36-7-4-918.4, but they are seldom used here; the most recent land use variance the Board has heard was in 2015. Typically, the zoning district permits a proposed use, or a rezoning is supportable. As land use variances allow a use not otherwise permitted in a zoning district, they may be termed essentially “rezoning lite.” This can be seen as running around the legislative process of the Plan Commission and County Commissioners by using the judicial process of the BZA, which further limits the appropriateness of land use variances.

However, in this case, the Commission suggested a variance may be the more appropriate choice than a rezoning.

Note that the criteria of land use variances are different than that of development standards variances. In particular, the term “practical difficulty” is replaced with “unnecessary hardship.” Hardship is a higher standard than difficulty, although it is not specifically defined by the statute. For reference, Monroe County has defined “unnecessary hardship” as the following:

*Hardship or unnecessary hardship is a significant economic injury that:*

- *Arises from the strict application of the ordinance to the conditions of a particular, existing parcel of property;*
- *Effectively deprives the parcel owner of all reasonable economic use of the parcel; and*
- *Is clearly more significant than compliance cost or practical difficulties.*

Of course, the Board is not obligated to follow that definition exactly, but it must still consider the higher standard imposed by the hardship criterion.

### **REVIEW CRITERIA**

Indiana Code §36-7-4-918.4 and Section 10.10 of the Zoning Code state the criteria listed below upon which the Board must base its review. Staff’s comments/proposed findings of fact under each criterion.

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

The proposed variance would not be injurious to the public health, safety, or morals, as the proposed single-family dwelling land use is already permissible under the AG zoning district, although the total quantity of three platted lots exceeds the threshold imposed by the code standard.

Similarly, if there is not a peculiar reason to permit the additional platted lot, the general welfare would be injured by degrading the effectiveness of the code.

**2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;**

Again, the variance is not for the type of land use, but essentially the quantity proposed. The area surrounding the subject property has single-family dwellings on 3- to 10-acre lots, and as proposed this variance would permit the platting of a similar parcel.

However, if this variance were to permit the platting of multiple minimum acreage lots, as may be expected under the RR district, the effect would be more substantial and potentially adverse. Such a

development could be out of character for the adjacent area and would be best handled as a rezoning to depict the discrepancy in use intensity.

**3. The need for the variance arises from some condition peculiar to the property involved;**

As described above, the need for the variance arises from the series and nature of splits and plats over time that is unique to this property. Additionally, the configuration of the parcels yields a situation in which the third platted lot would be larger than the first two platted lots, which is again a peculiarity arising from the nature of the splits of this parcel and parent tracts.

**4. The strict application of the terms of the code will constitute an unnecessary hardship if applied to the property for which the variance is sought; and**

The strict application of the zoning and subdivision ordinances prohibits the use of this property essentially for all but agricultural uses. This is not a complete deprivation of use, and in many places, such a restriction would be reasonable to achieve the purpose for which the regulations were adopted.

In this case though, the location of the parcel, being adjacent on three sides to residential uses, and its size and irregular shape, severely limit the suitability of using the parcel for agriculture by an off-site operator. The petitioner’s submitted information that there was a lack of offers to purchase the property as agricultural also supports this conclusion.

So, while the property is not devoid of permissible uses, the economic viability of the parcel is evidently limited to such a degree as to be unreasonable.

**5. The approval does not interfere substantially with the adopted comprehensive plan.**

As shown on the Comprehensive Plan Land Classification Map, and as discussed in detail in the rezoning requests, this property is depicted as an Agricultural classification, but the Plan’s definition could recommend it as either Agricultural or Transitional Agricultural. The purpose of Agricultural is “to maintain large, undeveloped areas for productive agricultural uses and intense agricultural-related uses...generally away from municipalities and residential development.” Transitional Agriculture generally recommends large-lot residences mixed with agriculture.

Based on these recommendations, it seems that the proposed use of one additional single residential lot would not interfere with the recommendations of the Comprehensive Plan. As suggested by the Plan Commission, the rezoning of the parcel to RR to permit the use may allow, or at least appear to allow, the division of the property into more, smaller lots. Doing so could be contrary to the recommendation of the Plan.

**SUGGESTED CONDITIONS**

If the Board finds to grant the variance, staff recommends the following condition(s):

1. The variance is granted to permit a Major Residential Subdivision in the AG, Agricultural zoning district, consisting of not more than three (3) platted lots from the 2018 parent parcel.
2. Not more than three (3) lots shall be platted by the petitioner.

Date report prepared: 8/15/22

**BOARD OF ZONING APPEALS ACTION**

Findings of Fact Criteria

	<b>Denihan</b>		<b>Lopez</b>		<b>Wilkinson</b>		<b>Wolf</b>		<b>Wright</b>	
	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
<i>Criterion 1</i>										
<i>Criterion 2</i>										
<i>Criterion 3</i>										

Motion:  Grant  
 Grant w/conditions  
 Deny

By: \_\_\_\_\_ Second by: \_\_\_\_\_

	<b>Denihan</b>	<b>Lopez</b>	<b>Wilkinson</b>	<b>Wolf</b>	<b>Wright</b>
<i>Yes</i>					
<i>No</i>					
<i>Abstain</i>					



E BURD RD

92-04-29-000-104.000-009

92-04-30-000-203.001-009

92-04-29-000-303.000-009

92-04-29-000-204.900-009

E CRONE RD

92-04-30-000-202.000-009

E 200 N

92-04-31-000-101.000-009

92-04-32-000-105.000-009

92-04-32-000-102.001-009

92-04-32-410-001.000-009

92-04-32-000-403.002-009

92-04-31-105-002.900-009

205

92-04-31-000-107.000-009

92-04-31-000-103.000-009

N 450 E

E SR 205

E CIDER MILL RD

92-04-32-000-204.000-009

# YOUR NAME

4730 E. C R 200 N. COLUMBIA CITY, IN | 954-758-2862

SUBJECT PARCEL: 92-04-32-000-403.004-009 / E. 200 N

COLUMBIA CITY, IN

**Dear neighbors/ members of the board,**

I would like to start by thanking the board for its time and this opportunity to petition my case. To begin, my family and I have just relocated to Indiana due to a transfer with my current employer and have been residents since November 2021. Moving and finding a place to call home has been no easy task, particularly when trying to find an area suitable for our children to call home. Without inundating the board with the process that was undertaken to get to this point, we will simply say that after a two year process of looking for property and waiting for our transfers, we came across land in Whitley County and fell for its charm and peaceful community feel. Considering the market and a multitude of other variables, we were lucky enough to find and secure 18 Acres off of E CR 200 N in Columbia City. With the assistance of my parents, the land was purchased with the intent that it would not just afford my family a place to call home, but also an opportunity for my friend / co-worker Andrew Bonneau and his family to do the same. After purchasing the land in the middle of my traveling for work and the pain staking transfer process, I began the process of splitting the parcel in an effort to provide the Bonneau family approximately 4 acres to build a home. During the initial stages of this process and out of my depth in the zoning ordinances , I attempted to split the parcel equally in an effort to retain land for myself, the Bonneau family and also offer my parents an opportunity to own and build on acreage, all while maintaining adherence to zoning/ building requirements and the overall community feel. Unbeknownst to me at the time, it became evident during the process of the first proposed parcel split, that the land could not be split into the desired parcels without triggering a rezoning. Due to timing, overall building costs, inflating interests rates, supply chain issues and post COVID labor increases, we took the opportunity afforded to us, to have the land split into two buildable lots, approximately four (4) acres each with the remaining ten (10) acres maintained as agricultural. This option provided us and the Bonneau family the ability to start to build our homes without the need for rezoning. This option also afforded me an opportunity to engage the community leaders, read the land sale market and address community concerns.

After purchasing the land, and moving to Indiana, we tested the market for the 10 acres to see what the overall market and community feedback would be. During this process it became evident the land it self was sought for

the same reasons we had purchased the land, to build a home. It became evident that although it was zoned agricultural, like our current lot, the interest was for the land to be used to build a residence and not for farming. It should be noted that we did attempt to offer the land for farming during this process, but were not successful.

Once we moved to Indiana, through our observations and discussions with the zoning department, it was apparent our proposed use of the land would not differ from any of the land use in the immediate area nor would it interfere with any agricultural activities, as the land in the surrounding area is mostly residential homes on smaller acreages. Even though the land meets all other building requirements, exceeds lot size and square footage, due to the current land split/ zoning ordinances, it requires either a rezoning or land variance usage appeal. After reconvening, we decided as a family to repetition to the zoning board in an effort to give my parents and or any potential future owners of the 10 acres the opportunity to build a home while still maintaining the integrity of the community feel. It was during this recent petition that the subject of re-zoning became a concern for the board. Although the concern was focused on the rezoning from agricultural to residential rural, it was also made clear by the community and the zoning board members that there was no issue with the land being used to build a home, only that an alternative to rezoning should be an option; such as an appeal to this board of zoning appeals for land variance usage, and or a re-wording of the current parcel split verbiage in the zoning ordinances, allowing for more than the current allotted splits without triggering a rezoning. I would like to state that is our intent for the 10 acres to remain as one parcel, but with the ability to build a residence.

I would like to take this moment to state, I am not a land developer, builder or otherwise, as our only reason for purchasing the land was to find a place to call home. I would also like to note, this whole process has been quite exhausting and stressful despite the help and guidance from the building and zoning department. It has become evident this proposed solution offered by the zoning board is our last option, and It is my hope the board will consider my appeal for this particular 10 acres to be approved for a single family residential build, while still maintaining it current zoning. I look forward to answering any questions or concerns in the near future.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

**Your Name**