

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

22-W-VAR-23 DEVELOPMENT STANDARDS VARIANCE
Eric and Jody Dorais
East Crescent Avenue, across from 2921 Crescent

**OCTOBER 24, 2022
AGENDA ITEM: 1**

SUMMARY OF PROPOSAL

Current zoning: LR, Lake Residential

Property area: 7,923 sq. ft.

The petitioner, proposed owner of the subject property, is requesting development standards variances of the required setbacks and the minimum area for a new lot to allow for construction of a new detached garage on a proposed new lot located near the east end of Crescent Avenue, approximately across from 2921 E. Crescent, in Section 12 of Thorncreek Township. The area of the subject property is currently unimproved, although some earthwork has been recently done.

Per the submitted plot plan, the petitioner would acquire a 7,923 sq. ft. lot off the west end of the current property. This split will require a plat approval, which the petitioner would pursue if this variance is granted. The minimum area for new lots in the LR district is 10,000 sq. ft., so a variance of 2,077 sq. ft. is requested.

The proposed detached garage would be 40'x100'. Note that while it is a garage, it would be the only structure on the lot, so policy is to apply the primary structure setbacks. So, the proposed setbacks are:

	Proposed	Code	Variance
North (front)	26.2'	35'	8.8'
East (side)	4.5'	10'	5.5'
South (rear)	10.0'	15'	5'
West (side)	4.5'	10'	5.5'

For reference, based on the Best Available map information and topography, the structure would not be located in the regulatory floodplain.

REVIEW CRITERIA

Indiana Code §36-7-4-918.5 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 lot area variance will not likely be injurious to the public health, safety, or morals. The proposed area could permit adequate room for access and circulation around the property and would not impede availability to light and air to adjacent properties to an unreasonable degree relative to other properties in the LR district.

The proposed setback variances could injure the public safety and health. Access around buildings for emergency access is a public safety concern, and a minimum separation of 5' from property lines is a fire code standard. These have been previously discussed by the Board in prior cases. So, the proposed 4.5' side setbacks in particular could be injurious. The proposed 26.2' front setback would be sufficient for a parked vehicle between the structure and right-of-way and so would protect public safety along the road. Correspondingly, the rear setback reduction permits a greater front setback, yet without severely reducing the access around the property.

The general welfare may be injured if practical difficulties specific to the property are not found.

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; and

By itself, the requested lot area would not affect use and value since this lot would be larger than many of the existing lots in the vicinity. However, the reduced lot area may cause proposed improvements to need variances (as already proposed here) or otherwise have greater impacts on the surrounding area.

The proposed 40'x80' building would be noticeably out of scale with nearly all of the other buildings along Crescent Avenue. The most comparable building, at 2856, is located on a lot five times the size of the proposed. This deviation from the character of the neighborhood could affect the value of the area. However, whether such effect is substantial is for the Board's consideration.

The use of the property to the west may be impacted by the proximity of the structure to the property line because of the nearness of their parking area to the property line. Again, this could be an adverse impact, but the Board will need to determine if it is substantial.

3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction or restriction of economic gain.

The strict application of the Ordinance terms of the proposed lot area may not result in a practical difficulty. The parent tract from which this is to be split is approximately 90'x260', so there should be sufficient width to add 20'± to the proposed lot to make the minimum 10,000 sq. ft. while still retaining enough area on the remainder tract for that property owner's own outbuilding. That said, the existing lots in the area are smaller than the code requirement, so a practical difficulty may arise out of being more consistent with the area.

There may or may not be practical difficulties for the proposed front and rear setback variances. Given the depth of the parcel of 78' to 88', the buildable depth within these setbacks is 28' to 38'. Looking at the existing outbuildings along Crescent, most are around 25'-30' in depth, so this building envelope seems to be sufficient for other garages. Thus, the requested 40' deep garage could be considered be a self-imposition. That said, the balancing of front and rear setbacks to maintain access around the property does create a difficulty in applying at least one setback.

There does not appear to be a practical difficulty in applying the side setbacks since this structure is proposed on a lot that is not yet created. As such, the lot width can be adjusted to accommodate the structure, or the structure to the lot width. Otherwise, this is a self-imposition.

Date report prepared: 10/18/23

BOARD OF ZONING APPEALS ACTION

Findings of Fact Criteria

	Green		Sheiss		Wilkinson		Wolf		Wright	
	<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>										

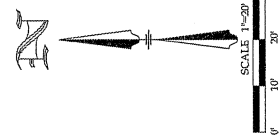
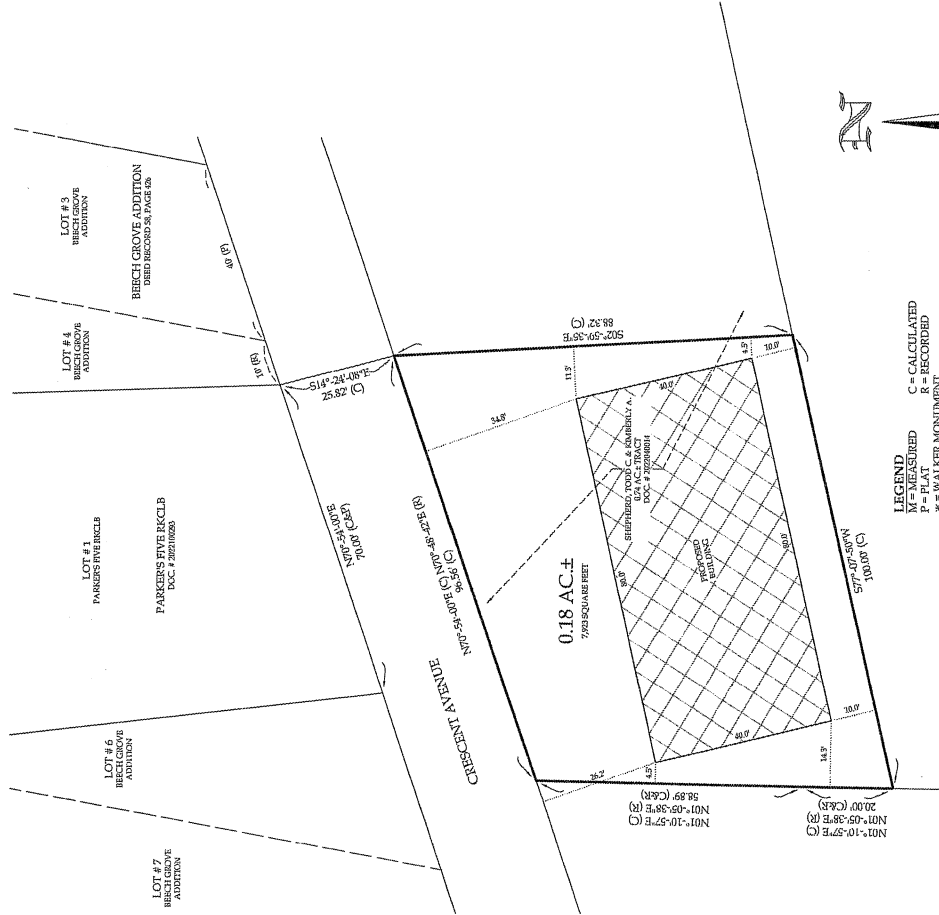
Motion: Grant
 Grant w/conditions
 Deny

By: _____ Second by: _____

Vote:	Green	Sheiss	Wilkinson	Wolf	Wright
<i>Yes</i>					
<i>No</i>					
<i>Abstain</i>					

PLOT PLAN

PREPARED FOR
TODD C. & KIMBERLY A. SHEPHERD AND ERIC DORAIS
 SITUATED IN THE FRACTIONAL SOUTHWEST QUARTER OF SECTION 12,
 TOWNSHIP 32 NORTH, RANGE 9 EAST,
 WHITLEY COUNTY, INDIANA.
 THIS DRAWING IS NOT INTENDED TO BE REPRESENTED AS A RETRACEMENT OR ORIGINAL BOUNDARY SURVEY, A ROUTE
 SURVEY, OR A SURVEYOR LOCATION REPORT. SUBJECT TO PLAN COMMISSION APPROVAL.



LEGEND
 M = MEASURED
 P = PLAT
 R = RECORDED
 * = WALKER MONUMENT

NOTES
 This sketch is based on a survey done by J.K. Walker & Associates, P.C. dated May 2, 2023.
 The purpose of this sketch is to show a proposed addition for variance.

PART OF THE FRACTIONAL SOUTHWEST QUARTER OF SECTION 12,
 TOWNSHIP 32 NORTH, RANGE 9 EAST, WHITLEY COUNTY, INDIANA
 FOR: **SHEPHERD, TODD C. & KIMBERLY A.
 DORAIS, ERIC**
 SCALE: 1"=20'
 DATE: 9-8-2023
 DRAWN BY: KDM
 PAGE: 1 OF 1
 DRAWING NUMBER
RV-130 11"

WALKER & ASSOCIATES
 EST. 1964
 112 WEST VAN BUREN STREET
 COLUMBIA CITY, IN 46725
 Phone: (260) 244-4640
 Fax: (260) 244-4640
 www.walkersurveying.net
 E-mail: mail@walkersurveying.net

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