

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

**24-W-VAR-16    DEVELOPMENT STANDARDS VARIANCE**  
Greg & Lory Norden  
5860 N. 350 East

**SEPTEMBER 24, 2024**  
**AGENDA ITEM: 1**

**SUMMARY OF PROPOSAL**

Current zoning: LR, Lake Residential

Property area: 3,300± sq. ft.

The petitioners, owners of the subject property, are requesting a development standards variance of the required minimum main floor area of a dwelling on the property located at 5860 N. 350 East, in Section 7 of Smith Township. The property is currently improved with a detached garage.

As proposed, the detached garage, located on a separate parcel across the road from the primary dwelling, is to be remodeled to include living space for the property owner's son to reside.

Per the submitted floor plan, the proposed remodel will include upstairs living space of 450± square feet and 102± square feet downstairs. The downstairs remodeling will include a kitchen and bathroom area. The remodeling was started without a building permit and is now nearly complete.

Since this structure is located on its own parcel, and includes kitchen, bathroom, and living space, it is now treated as a single-family dwelling instead of an accessory structure. The code requires a minimum floor area of 950 sq. ft. for a residence, so a variance of 398± square feet is requested to permit the proposed 552± sq. ft. living area.

For reference, based on the Best Available map information and topography, the structure should 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 variance would not be expected to be injurious, as it is intended to be a temporary situation for the petitioner's family member, who is aware of the limitations of the floor area, so that he may be near the petitioner. If this were to be sold as is to a new buyer, the smaller area could be injurious to the public health since minimum floor areas are established to protect public health by ensuring adequate living area for the population at large.

**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**

This variance will not likely affect the use and value. The external appearance of the structure would be a garage and generally indistinguishable from many other garages in the area. If outside storage becomes prevalent due to the small living area, that may affect the surrounding area.

**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 may or may not result in practical difficulties. The code establishes a minimum floor area to protect public health. In this case, there is a stated intention that the smaller floor area would only affect the petitioner, not the public, since it should only endure for the tenancy of the petitioner. So, the purpose for which the standard is created does not apply in this apparently temporary situation.

However, the code does not contemplate temporary uses because there is an assumption that a temporary use could easily become a permanent use and create the injurious effects. Where conditions restricting length of usage can be made, such as a variance or special exception, these may be used to address this difficulty. A close comparison may be made with secondary dwellings.

Whether this is self-imposed is undetermined. The petitioner could finish the proposed garage space on the first floor to the living area and meet the minimum 950 sq. ft. area. Doing so might not necessarily increase the actual living area used, but just the living area calculated for the purposes of the code and would reduce the available parking on the property. The proposal reflects a temporary situation that is not well addressed in the code that can be addressed by use of a conditioned variance.

**SUGGESTED CONDITIONS**

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

1. The variance is granted only for the petitioner and is not transferable.
2. The structure is to be compliant with building and health code requirements.
3. A deed restriction is to be recorded to the effect that the living area is not compliant with the zoning code minimum, and any future owner must comply with the zoning code standards or seek an additional variance.

Date report prepared: 09/18/2024

**BOARD OF ZONING APPEALS ACTION**

Findings of Fact Criteria

	Green		Sheiss		Wilkinson		Wolf		Wright	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Criterion 1										
Criterion 2										
Criterion 3										

Motion:  Grant  
 Grant w/conditions  
 Deny

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

	Green	Sheiss	Wilkinson	Wolf	Wright
Yes					
No					
Abstain					





Mccoy, Michael  
T M & Mccoy,  
Rebecca

Feliciano,  
Jodie &  
Jose III

McKee,  
Donald C

Green,  
Richard  
Allen

Mathews, Eddie  
E & Theresa J  
Mauger, Robbin A  
Thomas H & Peggy  
J Revocable Trust  
Hornor,  
Smith, Esther  
R & Creech,  
Dennis J  
Hornor,  
Thomas H & Peggy  
H & Peggy J  
Revocable Trust  
Nelson, Rob, Tedeschi,  
Monica; Bosmans, Paullette  
& Goldwood, Michelle L  
Hockerman,  
David E &  
Kathy S  
Tipton, Claude G &  
Diana L And Davison  
Richard A & Shane  
Leonard,  
Christopher  
& Emily

Hockerman,  
David E &  
Kathy S

Ritumalta-White,  
Julie A

McKee,  
Donald C

Green,  
Richard  
Allen

Green, Richard  
Allen & Paula Sue

ESTATE  
CAMP RD

Dietz,  
Carl D &  
Jennifer L

Dietz, Carl D  
& Jennifer L

Pearce, Ronald  
A & Catherine L

Hockerman,  
David E &  
Kathy S

Leonard,  
Christopher  
& Emily

Miller,  
Adrian M &  
Casey M

Pearce, Ronald  
A & Catherine L

Pearce, Ronald  
A & Catherine L

Hornor,  
Thomas  
H & Peggy  
J Revocable Trust  
Mauger, Robbin A

Kunkle,  
Peggy L

Kunkle, Peggy L

Pearce, Ronald  
A & Catherine L

Fox, Michael K  
& Teresa K

Fox, Michael  
K & Teresa K

Miller Cabinet Company  
Inc

Heinzelmann,  
Thomas Alan

Miller J  
Cabinet  
Co Inc

Green, Tara  
A & Brett A

Heinzelmann,  
Thomas Alan  
Company Inc

Miller  
Cabinet  
Co Inc

Butler, Mary  
Jo & Butler,  
Rodney F

Norden, Greg  
A & Lory Ann

Marschand,  
Steven &  
Sherral

Hood, Cathryn L

Hood,  
Cathryn L

Franklin,  
Keith L

Hess, Jeffrey  
L & Lynda D

Franklin,  
Keith L

Marschand,  
Steven &  
Sherral

Marschand, Steven  
Marschand Sherral

5805 N.  
350 E.,  
Llc

5805 N. 350  
E., Llc

Lee, Joby L

Christner, Laura

Huth, Barbara D

Lee, Joby L

Ayres, James  
M & Dawn L

Burchett,  
Danny

Riddle, Marvin  
Erick & Donna J

Lopshire,  
Gary J &  
Carolyn E

Dietz, Jessica Marie

Zimmerman,  
Max Edwin Jr  
& Linda K

Boliaux,  
Michael  
Edward

Smith  
Township

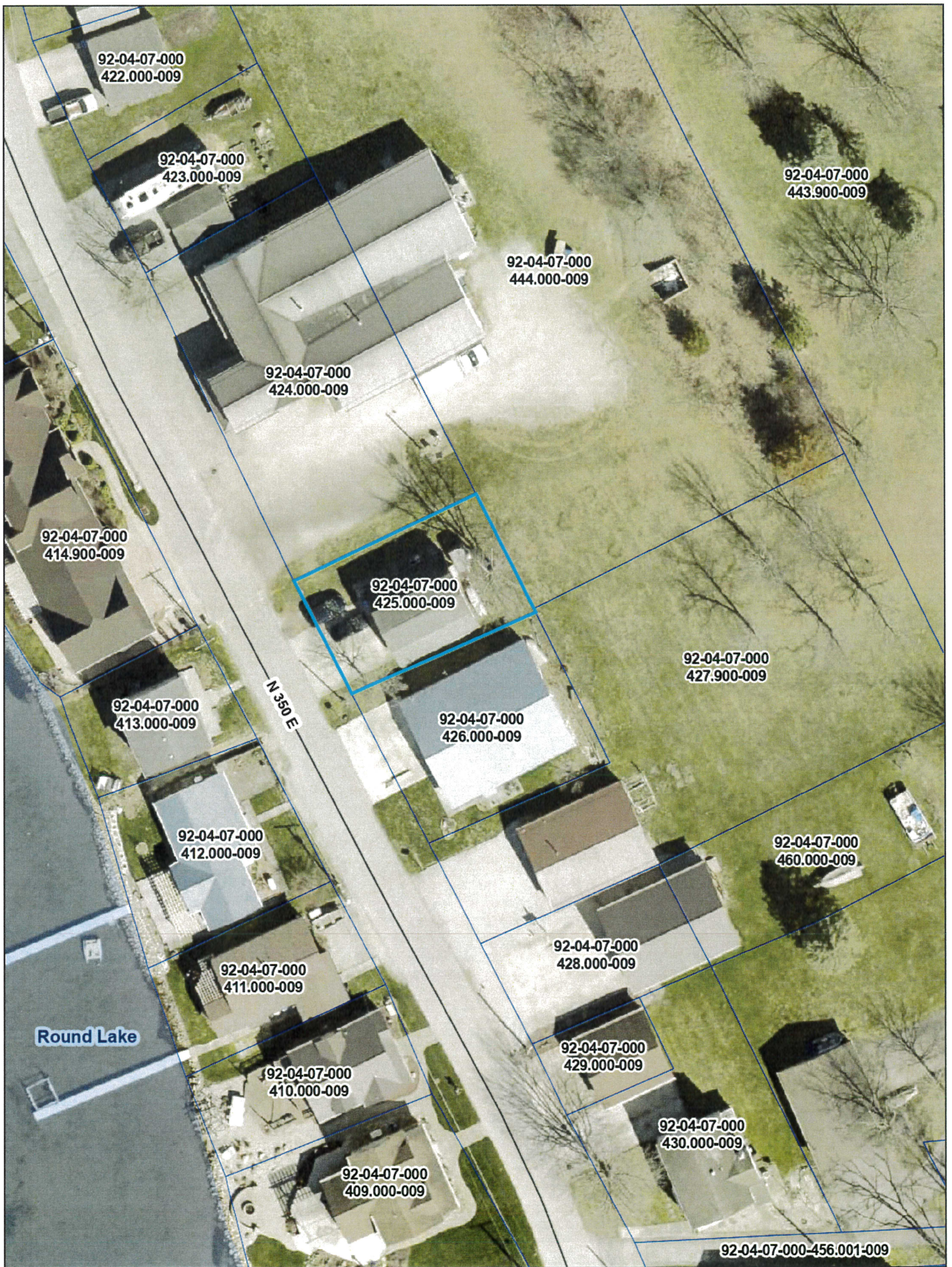
Driver, Michael  
D & Jennifer M

McGhee, Ian M

Bell, Michael L  
& Rebecca Ann

Driver, Michael  
D & Jennifer M





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Round Lake

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