

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

22-W-VAR-1 DEVELOPMENT STANDARDS VARIANCE

JANUARY 25, 2022

Harold Fairchild, III

AGENDA ITEM: 2

Fairchild Subdivision, east side of Johnson Road, approx. 0.8 mile north of 150 North

SUMMARY OF PROPOSAL

Current zoning: AG, Agricultural

Property area: 3.68± acres

The petitioner, owner of the subject property, is requesting a development standards variance for a reduced minimum lot width for a pending subdivision plat on the property located on the east side of Johnson Road, about 0.8 mile north of the intersection of 150 North in Section 27 of Smith Township.

The petitioner received primary plat approval for the Fairchild Subdivision from the Plan Commission in October 2021. The lot width in the plat did not meet the minimum required width of 225' until about halfway back the 750' deep lot. Because the front building line is placed where both the minimum lot width and front setback depth standards are met, the building line was located approximately 370' from the right-of-way line rather than at the *minimum* front setback of 40'.

Since that time, the petitioner found that the topography of the eastern part of the lot was steeper than had been expected, making their initial house location infeasible. To account for the slope, the petitioner revised the house location to the west, which would place the structure on the narrower part of the lot and in front of the setback line.

The required lot width is 225'. The petitioner is seeking a variance to reduce the required width to 212'±, which would permit the front building line to be placed 131'± from the right-of-way line. Thus, the requested variance is approximately 13'.

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 will not likely be injurious to the public safety or morals, as the requested lot width reduction would not modify the required setbacks and would still permit adequate separation between buildings and property lines. The public health would also not be expected to be affected as there would still be adequate room for the required two septic system locations on the property. As with any variance, the general welfare may be injured by degradation of the effectiveness of the zoning code if there are not site-specific difficulties for the variance.

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

It is not expected that this variance will adversely affect the value of the area adjacent to the property as properties as the lot width reduction would be minimal and the proposed residential use and structure would be otherwise compliant with the AG district standards.

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 results in practical difficulties. The 225' minimum lot

width standard is apparently intended to ensure adequate room for improvements, driveways, septic system, etc. for a code-minimum 80,000 sq. ft. lot. The lot area in this case is twice the minimum area, allowing room for such improvements. Further, the topography of the lot creates a difficulty that shifts the practical buildable area to the west, into the narrower part of the lot. Finally, the property was split to the 212' width years before the petitioner's acquisition of it.

Date report prepared: 1/18/22

BOARD OF ZONING APPEALS ACTION

Findings of Fact Criteria

	<i>Vote:</i> Denihan		Lopez		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>										

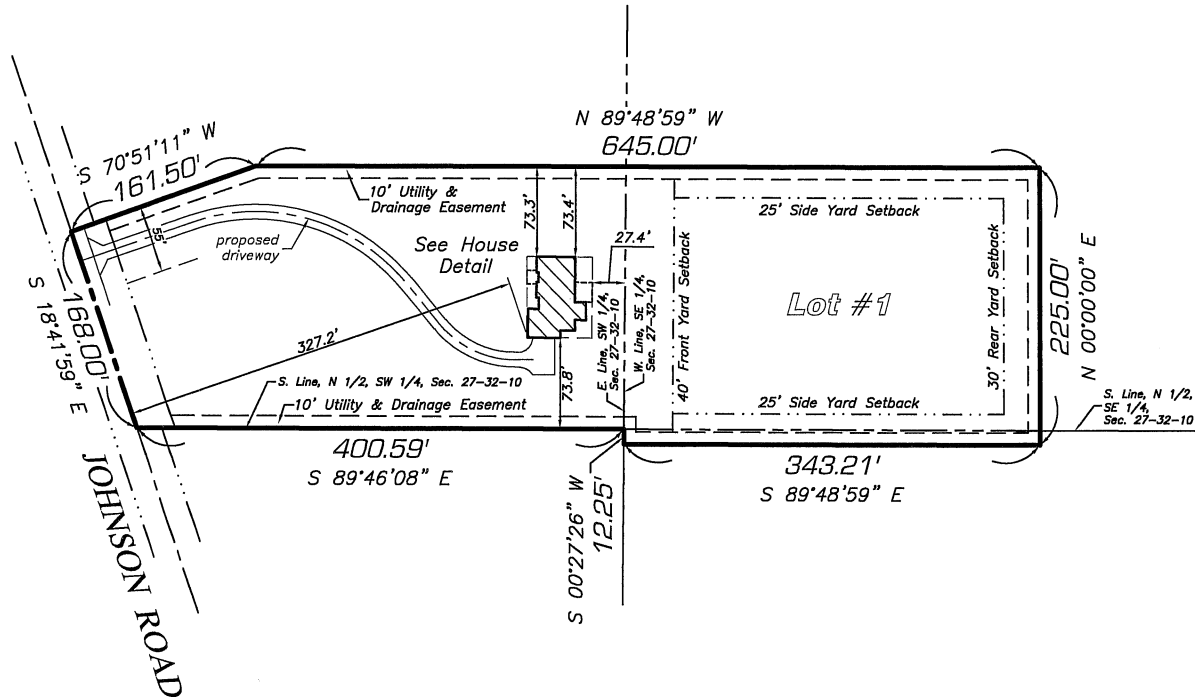
Motion:

By:

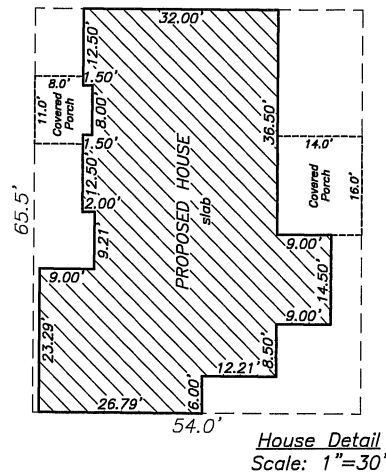
Second by:

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

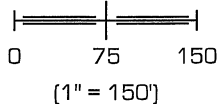
Construction Plot Plan



DRAFT



SCALE IN FEET:



Lot area per plat is 3.68 acres±.

This drawing is not intended to be represented as a retracement or original boundary survey, a route survey, or a Surveyor Location Report. [865 IAC 1-12-12(f)]

Sauer Land Surveying, Inc.
14033 Illinois Road, Suite C, Fort Wayne, IN 46814
Tel: 260/469-3300 Fax: 260/469-3301
Toll Free: 877/625-1037

Description: Lot #1 in Fairchild Subdivision (Whitley Co.)

Address: tbd North Johnson Road, Columbia City

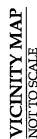
Builder: MBN Properties LLC
7563 E. Lincolnway Road
Columbia City, IN 46725

Tel.: 260/908-3460
or 260/437-2294

Date: 15 DEC 21 (rough-stake)

Revised:

SITUATED IN THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 27, NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 27, AND SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 27,
ALL BEING IN TOWNSHIP 32 NORTH, RANGE 10 EAST, WHITLEY COUNTY, INDIANA

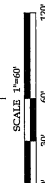


LEGEND
 M = MEASURED
 P = PLAT
 C = CALCULATED
 R = RECORDED
 * = WALKER MONUMENT

BASIS OF BEARINGS

BASIS OF BEARINGS
The basis of bearings for this drawing is a deed bearing of N00°-00'-00"E for the East line of the Southeast Quarter of Section 27, Township 32 North, Range 10 East, Whitley County, Indiana.

AREA NOTES
The Plat of Fairchild Subdivision contains 3.80 acres.
Lot Number 1 contains 3.68 acres.
There is 0.12 acre of Dedicated Right-of-Way.



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SITUATED IN THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 27, NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 27, AND SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 27,
ALL BEING IN TOWNSHIP 32 NORTH, RANGE 10 EAST, WHITLEY COUNTY, INDIANA

Part of the North half of the Southwest Quarter of Section 27, together with part of the North half of the Southeast Quarter of Section 27, together with part of the South half of the Southeast Quarter of Section 27, all being in Township 33 North, Range 10 East, Whitley County, Indiana (This description prepared by Kevin R. Michel, LS808070006, as part of original survey plat of Fairchild Subdivision completed by J.K. Walker and Associates, P.C., dated September 22, 2021), and all together being more particularly described as follows, to wit:

Southwest Quarter of said Section 2; thence S89°46'-08"E (recorded N89°59'-40"E), on and along said South line, a distance of 400.59 feet (recorded 400 feet), to a rail iron post found at the Southwest corner of the North half of the Southwest Quarter of said Section 2; said rail iron post also being at the Southwest corner of the North half of the Southwest Quarter of said Section 2; said rail iron post further being at the Northwest corner of the South half of the Southeast Quarter of said Section 2; thence S00°27'-26"W, on and along the West line of the Southeast Quarter of said Section 2, a distance of 12.25 feet to a 5/8-inch iron pin capped "Walker"; thence S89°48'-59"E, a distance of said Section 2, a distance of 12.25 feet to a 5/8-inch iron pin capped "Walker"; thence N00°40'-40"E, a distance of 225.00 feet to a 5/8-inch iron pin capped "Walker" on the South line of a certain 5.488 acre tract of land recorded in Document Number 200510008 in said records; thence S89°48'-59"E (recorded N89°55'-10"E), on and along said Easterly projection line, a distance of 150 feet to a 5/8-inch iron pin capped "Walker" at the remains of a steel post found at a Southeast corner of said 2.000 acre tract of land; thence S00°51'-11"W (recorded S00°49'-45"W), on and along a South line of said 2.000 acre tract of land, a distance of 150 feet to the point of beginning, containing 3.88 acres of land, more or less, subject to legal right-of-way division Road, subject to all legal fence easements and other easements of record.

The accuracy of any flood hazard data shown on this report is subject to map scale uncertainty and to any other uncertainty in location or elevation on the referenced Flood Insurance Rate Map. The surveyed tract appears to be situated in Zone "X", which is not in a flood plain, as said land plots by scale on Map Number 18183CU180C of the Flood Insurance Rate Maps for Whitley County, Indiana, dated May 4, 2015.

This is an original boundary survey of part of the North half of the Southwest Quarter of Section 27, together with part of the North half of the Southeast Quarter of Section 27, together with part of the South half of the Southeast Quarter of said Section 27, all being in Township 32 North, Range 10 East, Whitley County, Indiana, located on Johnson Road. The surveyed tract is part of two (2) larger tracts of land as recorded in Document Number 2020100632 and Document Number 2018110406 in the records of Whitley County, Indiana, and was created as directed by a representative of the owner.

The Northwest corner of the Southeast Quarter of said Section 27 (Northeast corner of the Southwest Quarter of said Section 27) is not county referenced. Said corner was not marked.

The Southeast corner of the North half of the Southeast Quarter of said Section 27 was established a deeded distance of 1326.60 feet from the Northeast corner of the Southeast Quarter of said Section 27. A 5/8-inch iron pin capped "Walker" was found at said corner and was held this survey. A wood post was found 0.6 feet West of said corner.

The remains of a steel post were found at a corner of the surveyed tract.

See survey for monuments found that are referenced.

--- TAT & TSTB & ACCOCIAT

112 WEST VAN BUREN STREET

Phone: (260) 244-3640
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E-mail: mail@walkersurvey.com
www.walkersurvey.com

LAND SURVEYING, CIVIL ENGINEERING
& LAND PLANNING

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RS-132-08

In accordance with the Title 865 IAC 1-12 "Rule 12" of the Indiana Administrative Code, the following observations and opinions are submitted regarding the various uncertainties of the location of the lines and corners established on this survey as a result of:

- (C) Clarity or ambiguity of the record description used and of adjoiners' descriptions and the relationship of the lines of the subject tract with adjoiners' lines.

- ## NOTES
1. This survey¹ is subject to any facts and/or assessment that may be disclosed by a full and accurate title search. The undersigned should be notified of any additions or revision that are required. The undersigned was not provided with a current title commitment on this survey.
 2. All print set are #5 Rebars with caps marked "Walker".
 3. Quantity of items ordered shall be as shown on drawing.

6. Reference survey by Anderson, dated 07-19-05.
Reference survey(s) by J.K. Walker & Associates, P.C., dated 10-23-88, 05-27-94, 11-07-97, 10-23-03, 03-19-08, 09-26-13, 03-11-14, 05-09-14, 05-12-14 (2).

Primary approval granted on this _____ day of _____, 20____ by the Whitley County Advisory Plan Commission.

COUNTY COMMISSIONERS CERTIFICATION OF APPROVAL AND

PLAN COMMISSION STAFF CERTIFICATION OF APPROVAL

REDACTION STATEMENT
I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. - Kevin Michel

I, the undersigned Registered Land Surveyor licensed in compliance with the laws of the state of Indiana, hereby certify the hereon plot to correctly represent a Survey of the real estate described above as made under my direction, that all the monuments shown thereon actually exist, that lots and streets shown in the Plat have been established in accordance with true and established boundaries said Survey, and that this Survey and accompanying report has been completed in accordance with Title 865-IAC-1-2 and all other amendments thereto.

Kevin R Michel

We the undersigned, Harold O. Fairchild III and Holly C. Fairchild, owners of the real estate shown and described herein by virtue of certain deeds recorded as Document Number 2020100632 and Document Number 2018110406, do hereby certify that we have laid off, platted and subdivided, and hereby lay off, plat and subdivide, said real estate in accordance with this plat.

A perpetual easement is hereby granted to any private public utility or municipal department, their successors and assigns, within the area shown on the plat and marked "Utility Easement," to install, lay, construct, renew, operate, maintain and remove conduits, cables, pipes, poles and wires, overhead and underground, with all necessary braces, guys, anchors and other equipment for the purpose of serving the subdivision or adjoining property with telecommunication, electric gas, sewer and water service as a part of the respective utility systems, and the right is hereby granted to enter upon the lots at all times for all of the purposes aforesaid.

Areas designated on the plat as "Drainage Easement" are hereby reserved to the County, or subsequent governmental authority, for the purpose of constructing, maintaining, operating, removing, and replacing stormwater drainage facilities, be it surface or subsurface, in accordance with plans and specifications approved by the governing authority. The easement shall extend to the centerline of the drainage facility, including structures, fill, or other materials shall be placed in the Drainage Easements so as to impede the flow of storm water. Drainage Easements shall not be disturbed in a manner as to interfere with the flow of storm water and all grades shall be maintained as constructed. Responsibility for the maintenance of Drainage Easement stormwater facilities, including but not limited to periodic removal and disposal of accumulated particulate material and debris and other obstructions, shall be the responsibility of the owner of the property within the easement. With the owner's consent, and with the owner's written approval, the County may, within the plat, and such responsibility shall pass to any successive owner.

No owner of any Lot or other parcel within this Plat shall at any time remonstrate against or attempt to cause the cessation of any farming operation, whether now existing or existing in the near future which interferes with the residential use of the Lot or tract owned by the person or persons remonstrating. Any person accepting title to a Lot or tract within this Plat, acknowledges that general agricultural areas exist adjacent to or near this Plat, and that activities on such agricultural areas may result in normal farm interference, such as noise, odor, dust, agricultural implement traffic, unusual hours, and other normal agricultural uses.

The foregoing covenants, or restrictions, are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2007, at which time said covenants, or restrictions, shall be automatically renewed for successive periods of ten years unless amended through the Plan Commission. Invalidation of any one of the foregoing covenants, or restrictions, by judgment or court order shall in no way affect any of the other covenants or restrictions, which shall remain in full force and effect.

Witness our hands and seals this _____ day of _____, 20__.

County of Whitley)

Notary Public My Commission Expires

KEVIN N. MITCHELL, FORTRESS COLLEGE

Johnson, David T., Trustee
Of The David T. Johnson,
Revocable Trust & Johnson,
Jann E., Trustee Of The J

Johnson, David T
& Johnson, Jann
E Trustees Rev
Trust 11/12/2002

Schane,
William M
& Susan

E JOHNSON RD

N675 E

Zumbrun, Charles
F. & Deborah M. &
Zumbrun, Lana J.

Zumbrun, Charles
F. & Deborah M.
Zumbrun, Lana J.

Zumbrun, Lana J &
Zumbrun, Charles
F & Deborah M

Johnson
Bros Inc

Woodward,
Michael R
& Sue A

Shively, Tadd
A & Kari M

Fairchild,
Harold Olin
& Holly C

Kelly, Michael
W & Kaitlin C

Fairchild,
Harold O Jr
& Jeannine

Geiger,
Dalen &
April

Fairchild,
Harold O. III &
Fairchild, Holly C.

Marr, Robert
B & Jill A

Jb Sons

Schillace,
Tamorah S

Fairchild,
Harold O. III
& Holly C.

Johnson, Ronald L Rev
Trust & Johnson, David
Trust 1/2 Int Each

Johnson, Ronald L Rev
Trust & Johnson, David
T Rev Trust 1/2 Int Each