

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

22-W-VAR-2 DEVELOPMENT STANDARDS VARIANCE
Ryan & Tina Diepenbrock
7907 E. Popcorn Drive

**FEBRUARY 22, 2022
AGENDA ITEM: 5**

SUMMARY OF PROPOSAL

Current zoning: AG, Agricultural

Property area: 2.36 acres

The petitioner, owner of the subject property, is requesting a development standards variance for an encroachment into the required side setback on the property located at 7907 E. Popcorn Drive in Jefferson Township. The property is comprised of Lot 1 and part of Lot 2 of the Estates of Whitley (platted 1980). It is currently unimproved.

The petitioner's principal dwelling is located on the property to the north of the subject property. They have proposed to construct a 70'x60' two-story detached garage with entertainment spaces, office, media room, bathrooms, etc. The garage would have a driveway connection to the petitioner's existing driveway and to Popcorn Drive. While not currently described as such, the proposal would meet the definition of dwelling unit due to the combination of living, kitchen, and restroom facilities. Being on its own lot, this avoids issue with having multiple dwellings on a single lot, but setbacks of a primary structure are required rather than those of an accessory structure.

The proposed relevant setbacks are 35.5' from the Popcorn Drive right-of-way and 15.3' from the north property line (the common line between the petitioner's properties). The Estates of Whitley plat shows a 35' building line around the perimeter of the lot and a 15' utility easement along the north and south property lines.

Being a primary structure on a corner lot, the minimum setbacks are 40' front and 25' side (corner lots are not defined to have a rear yard). Since this is a platted lot, there is a precedent to honor existing platted building lines if they were compliant at the time of platting, so the south setback may be deemed compliant. Precedent and policy are also to treat adjacent properties in common ownership as having separate and distinct setbacks, the north setback requires approval of a 9.65' variance and a 19.65' building line encroachment.

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, health, and morals as the proposed setback continues to allow for access in and around the property and would not affect the availability of light and air to the adjacent property. 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

It is not expected that this variance will adversely affect the use or value of the area adjacent to the property as the proposal maintains the most visible, and therefore most impactful, setback along Popcorn Drive and only proposes to reduce the setback along the petitioner's common ownership line.

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 result in practical difficulties. Due to the configuration of the existing driveway, the topography of the property, and the petitioner's intention to have a drive-through garage, while maintaining the south building line, the structure is proposed to be skewed. If it were oriented east-west, the 60' width would be compliant with setbacks, but the driveway would require additional grading, which could have a greater impact on surrounding properties.

Combining the petitioner's parcels into one parcel by replatting could resolve the situation by removing the middle property line but doing so would place two dwellings (by definition) on a single property and still require a variance.

Date report prepared: 2/16/22

BOARD OF ZONING APPEALS ACTION

Findings of Fact Criteria

	Vote: Denihan		Lopez		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:

	Vote: Denihan		Lopez		Wilkinson		Wolf		Wright	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Yes										
No										
Abstain										



Wilcox, James
S & Heather R
Martin,
Jesse A
& Erin E

Ambuster,
Thomas G

Clancy,
Evan P

Jefferson
Township
Cemetery

Diepenbrock,
Ryan M &
Tina M

Diepenbrock,
Ryan M & Tina M

Schaefer,
Sue M &
Randall L

McIntyre,
Mary

Dull, Monte J
& Rebecca J

Armentrout, Everett C
& Armentrout, Lillian
S Co-Trustees

McClain, Paul
& Diane Evelyn

Ambuster,
Thomas G

Deister,
E Mark &
Cynthia

Hicks,
Tony &
D Renee

Hicks,
Tony &
D Renee

Ritter, Donald
R Jr & Karen S

Beer, David
K & Halley

Ambuster,
Thomas G

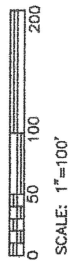
Orpheus, LLC

Orpheus, LLC

Ambuster, Thomas G
Amended & Restated Rev
Trust & Ambuster,
Pamela L Amended &
Restated Rev Trust

Moyle, N
Shepard & Wendy
Walker Multi-land

Lutz, David L
& Irene J A



2022 BARN PROJECT
EXISTING HOME IS 9490 COUNTY ROAD S 800 E
BARN SITE IS 7907 EAST POPCORN DRIVE

LOUGHEED & ASSOCIATES, INC.
CONSULTING ENVIRONMENTAL & CIVIL ENGINEERS
1017 SOUTH HADLEY ROAD * FORT WAYNE, INDIANA 46804
(260) 432-3665 * FAX 436-0224