

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

22-W-SE-5 **SPECIAL EXCEPTION**
Russell and Amber Mynhier
7455 S. SR 5

MAY 24, 2022
AGENDA ITEM: 3

SUMMARY OF PROPOSAL

Current zoning: AG, Agricultural

Property area: 1.84 acres

The petitioner, owner of the subject property, is requesting special exception approval for a secondary dwelling unit on their property located at 7455 South State Road 5 in Cleveland Township. The property is currently improved with a single-family dwelling and outbuilding. The outbuilding was constructed in 2000 as a barn and workshop. Based on available information, it appears that a previous owner converted the barn loft into a studio apartment unit around 2009; no permit for the conversion nor zoning approval were obtained.

The petitioner is seeking to obtain septic system permitting for both the primary dwelling and this secondary dwelling. As part of that process, the absence of approvals was discovered. The petitioner desires to correct this by requesting this special exception and a building permit.

As they do not currently have family members in need of the apartment, the petitioner requests that this secondary dwelling be permitted to accommodate asylum seekers or refugee families in conjunction with the petitioner's church. No rent would ever be collected.

This would be in conflict with the explicit definition of secondary dwelling unit, which states that the unit is to be occupied by a relative of the family residing the principal dwelling. A possible variance is requested for this.

Long-term, the petitioner proposes that the dwelling unit could be used by family members or upon sale of the property, it could be converted back to workshop or studio space by removing the kitchen.

Secondary dwelling units are defined by the zoning code as "either a portion of the principal building or a separate building, which is utilized as an independent living facility, or a Type II or III manufactured home, located on the same parcel and occupied exclusively by a relative of the family residing in the principal dwelling." In practice, these units are located in outbuildings or manufactured homes that may be removed or converted upon the conclusion of the secondary dwelling use. This is the significant difference between these units and a second full dwelling unit on a property.

In the AG, Agricultural District, secondary dwelling units require a special exception through the Board of Zoning Appeals. The requirements of Sections 10.9 Special Exception Standards apply.

REVIEW CRITERIA

Indiana Code §36-7-4-918.2 and Section 10.9(A) of the Zoning Code authorize the Board to review special exceptions and 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 special exception shall not involve any elements or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the performance standards;**
Residences typically do not have such elements, cause such conditions, nor contravene the performance standards.
2. **The special exception shall be sited, or oriented and landscaped to produce a harmonious relationship of building and grounds to adjacent buildings and properties;**
The secondary dwelling unit is located in an existing outbuilding and would be comparable and harmonious to the adjacent buildings and properties.
3. **The special exception shall produce a total visual impression and environment that is consistent with the environment of the neighborhood;**
There should be minimal change to the external appearance of the building since the unit was already constructed some time ago. So, the visual impression and environment to the neighborhood should be consistent.
4. **The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and**
The traffic volume and arrangement access of this use is unlikely to cause traffic congestion any more than any other single-family dwelling. Sufficient area exists to provide parking for the secondary dwelling unit.
5. **The special exception shall preserve the purpose of this Ordinance as stated in Section 1.4.**
The secondary dwelling unit use is a permissible special exception of the Zoning Ordinance. If a variance is granted, it seems this proposal meets the intent and rules for secondary dwelling units and so does not seem contrary to the purpose of the Ordinance.

VARIANCE 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 and morals as they are not affected by the relationship of the dwelling occupants.

Public health could be impacted if the studio unit were occupied by several persons, which would reduce the square footage per person. The family relationship standard provides somewhat of a check to this dilemma, as the occupants of the unit and the primary dwelling could be expected to have access to both the secondary and primary living areas. That is unlike a landlord-tenant situation, in which the spaces are often more defined. The petitioner has indicated that they would not charge rent and the occupants would be limited to refugees and "those experiencing times of need." As such, the proposed occupants may have a closer relationship to the petitioner than simply being tenants, although it is still not definable as "family."

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 value and use of the area adjacent to the property as the relationship of the occupants is not readily apparent, nor would it be expected to create any outward change in appearance or usage.

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 might result in a practical difficulty as the Code and state statute definitions of "family" limit the relationship to blood or marriage. The intention being again that the occupant of the secondary unit and primary unit could share some living space and resources and be an inherent limit on the intensity of the land usage.

Other types of similarly close, but non-blood or marriage, relationships are then disregarded. In this case, the petitioner is seeking to allow housing of refugees, asylum seekers, and others who may not have any close relationship whatsoever. Thus, the petitioner is a virtual surrogate family, and the nature of the relationship is more familial than landlord/tenant.

Finally, the petitioner could avoid both the special exception and variance request by eliminating the kitchen component, rendering it no longer a full dwelling unit. Doing so would eliminate most of the independency of occupants.

SUGGESTED CONDITIONS

Staff suggests the following conditions if the Board finds to approve the request:

1. The request is granted as presented.
2. The Special Exception and Variance are non-transferable and expire upon the transfer of the subject property from the petitioner's ownership.
3. The dwelling shall not be used as an income-producing rental unit.
4. The number of occupants of the secondary dwelling unit is limited. Staff suggests a maximum of three adults and three children, but the Board may discuss other limits.

Date report prepared: 5/20/22

BOARD OF ZONING APPEALS RECORD OF ACTION

Motion:

By:

Second by:

Approve

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Approve w/conditions

—

Deny

—

Vote: Denihan Lopez Wilkinson Wolf Wright

Yes

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No

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Abstain

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Weaver, Floyd
E & Romona L

Weaver, Floyd
E & Romona L

Hyser, Karen

Schipper, Rex A
& Schipper, Cinda
L Co-Trustees Of
The Schipper Rev
Trust 11/30/06

Mynhier,
Russell E
& Amber N

Mynhier, Mark B & Moss,
Marion (Joint Tenants
Full Survivorship)

M009 S

S6R15

S600 W

Snavley,
Michael G &
Rhonda S

Sickafoose,
Stanley L &
Barbara Ann

State Of
Indiana

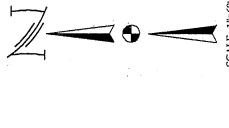
State Of
Indiana

Bolinger,
Preston D &
Sharron Lee

Sickafoose,
Stanley L &
Barbara Ann

Bolinger,
Preston &
Sharron



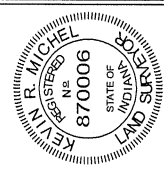


LEGEND
= MEASURED
P = PLAT
* = WALKER MONUMENT
FIELD WORK COMPLETED ON 5-13-2020

PROPERTY ADDRESS
7655 State Road 5
South Whitley, IN 46787

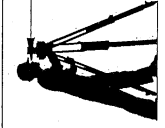
BASIS OF BEARINGS
The basis of bearings for this drawing is a deed recorded in the Public Records of the County of Whitley, Indiana, Northwest Quarter of Section 14, Township 30 North, Range 8 East, Whitley County, Indiana. Multiple GPS observations utilizing a WGS84 signal and a local coordinate grid were utilized for this survey.

SCALE 1"=60'



CERTIFICATE OF SURVEY
I, THE UNDERSIGNED REGISTERED LAND SURVEYOR LICENSED IN COMPLIANCE WITH THE LAWS OF THE STATE OF INDIANA, HEREBY CERTIFY THAT THE PLAT TO CORRECTLY REPRESENT A SURVEY AS MADE UNDER MY LICENSE AND IN ACCORDANCE WITH THE ACCOMPANYING REPORT HAS BEEN COMPLETED IN ACCORDANCE WITH TITLE 865-IAC 1-12 AND ALL OTHER AMENDMENTS THERETO.

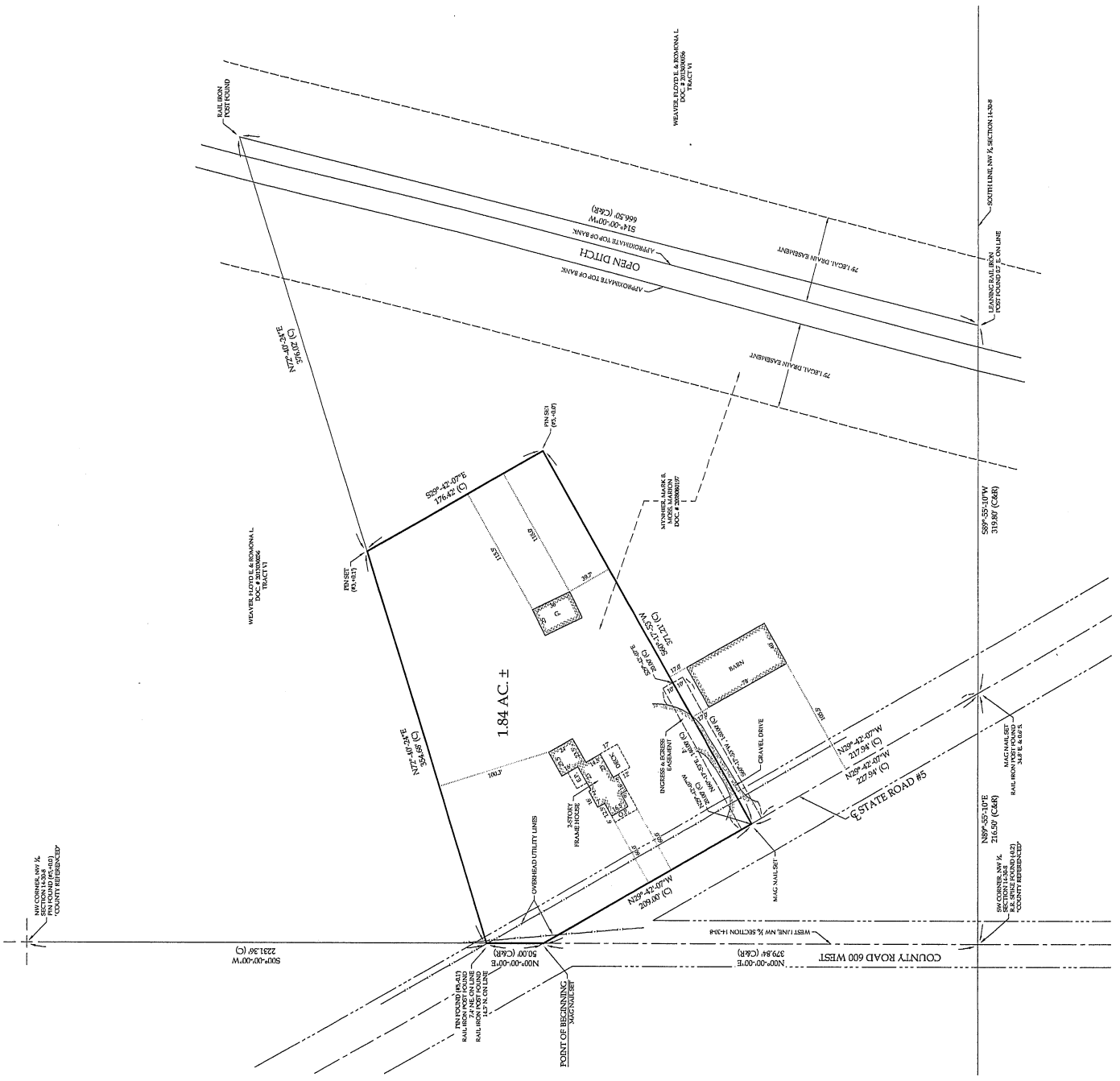
Handwritten signature: KRM



WALKER & ASSOCIATES
EST. 1984
112 WEST VAN BUREN STREET
COLUMBIA CITY, IN 46725
Phone: (260) 244-3640
Fax: (260) 244-4640
www.walkersurveying.net
E-mail: mail@walkersurveying.net

FOR: MYNHIER, MARK B.
MOSS, MARION
SCALE: 1"=60'
DATE: 5-13-2020
DRAWN BY: CAG
PAGE: 4 OF 4
DRAWING NUMBER: FX-177 "C"

LAND SURVEYING,
CIVIL ENGINEERING,
& LAND PLANNING



Whitley County Government Center
Joint Planning and Building Department
220 W. Van Buren Street, Suite 204
Columbia City, IN 46725

Department Members:

My husband and I purchased the property located at 7455 South State Road 5, South Whitley, Indiana in November of 2020. The home had an additional dwelling location above our detached workshop building. The dwelling included a full bathroom and kitchen, along with a living area and bedroom. Please see included floor plan drawing for further details.

We hated to leave the space unused, and offered it as a guest house to visitors. Our hopes evolved to include blessing those in need with the opportunity to live there rent free. When one of our church committees mentioned the need for housing for a family of asylum seekers our church was hosting, we jumped at the chance to help. While the church assumes financial responsibility for the family located within our second dwelling, we are not, nor do we ever plan on, collecting rent for the use of this secondary dwelling. Please see included letter from the church stating that we are not accepting rent in return for the use of this dwelling space.

Our family will never use this secondary dwelling as an income earning unit. Our hopes are to continue to use this secondary dwelling as blessing to those experiencing times of need. It is a beautiful space and we don't want to see it go unused.

Accommodations for this secondary dwelling include sufficient parking for two additional vehicles, a septic system we are currently working on updating, a separate propane tank, a separate electric meter, a separate furnace, and a well.

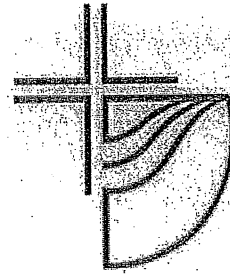
Although we plan on this home to remain in the family, acting as a sort of family homestead, in the event that we should ever sell the home, we could easily remove the full kitchen from the secondary dwelling unit, promoting the use of the space as a non-dwelling unit.

Should any additional questions or concerns need to be addressed, please don't hesitate to reach out using my contact information below.

Many thanks for your time and attention,

Amber Mynhier
7455 South State Road 5
South Whitley, IN 46787
Cell: 260.416.9581
Ambermynhier@gmail.com

Manchester Church of the Brethren
PO Box 349 | North Manchester, IN 46962
Location: 1306 Beckley Street



Church of the Brethren

April 12, 2022

To Whom It May Concern:

The Manchester Church of the Brethren is hosting a family in partnership with the Mynhier family, currently in South Whitley, IN (Mother, [REDACTED], Father, [REDACTED], Daughter, [REDACTED] and asylum seekers from Colombia.

The Mynhier's are not charging rent to the family and the church is not paying rent for the family to stay there. This is a non-income earning housing situation.

Thank you for your assistance,

A handwritten signature in black ink, appearing to read 'Seth Hendricks', written over a horizontal line.

Seth Hendricks, Associate Pastor of Youth & Congregational Life
Manchester Church of the Brethren