

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

19-W-VAR-10 DEVELOPMENT STANDARDS VARIANCE

Jason Forschner

South side of Elder Road, about ¾ mile north of Lincolnway

JULY 23, 2019

AGENDA ITEM: 3

SUMMARY OF PROPOSAL

Current zoning: AG, Agricultural

Property area: 3.261 acres

The petitioner is requesting a development standards variance for an encroachment into the required front setback and building line of Lot 3 of Bear Creek subdivision, located on the south side of Elder Road, about ¾ mile north of Lincolnway in Etna-Troy Township.

The petitioner and his wife own Lots 3 and 4 of Bear Creek, a subdivision platted in 2008. They acquired the property in May 2019 and propose to construct a new dwelling near the northeast corner of Lot 3.

Per the submitted plot plan, the house would be approximately 30'x70', with a 24'x24' attached garage on the north end, and would be oriented parallel to the east property line. The subdivision plat indicates that there is a right-of-way 30' in width from the centerline of Elder Road, and a 40' building line (so 70' from the road centerline).

As proposed, the house and garage would be located 42' from the centerline at the nearest point. This would be approximately 12' from the right-of-way line. The required minimum front setback is 40', so a variance and building line encroachment of 28' are being requested.

Also of note is that an adjacent property owner has disputed the survey/plot plan, in that the centerline of Elder Road may not lie on the section line. Since the right-of-way on the subdivision plat is defined from the centerline of the actual road, and setbacks are measured from the right-of-way, the question of whether the centerline and section line coincide is not material in considering the merits of this variance. It is not an issue to be taken lightly, and any discrepancy should be resolved by the appropriate parties, but it should not impact this variance request.

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 health and morals, as houses with attached garages do not typically have such injurious effects, and the petitioner's property in this case allows sufficient light, air, and access to and around the dwelling. Public safety may be injured, as the placement of a primary structure 12' from a county road right-of-way may have impacts if there is a traffic incident or if/when the road is widened. The general welfare may be injured by degrading the effectiveness of the zoning code if there are not site-specific circumstances that necessitate the requested placement of the dwelling/garage.

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 the setback distance has little bearing on the overall property value of the subject property and surrounding area. The use of adjacent properties will also not be adversely affected by the request

given the location of the setback reduction and overall size properties. If the variance sets a precedent though, additional variances in the future may eventually impact the use of the various properties—whether such cumulative impact is adverse and substantial would be determinate on the various future requests.

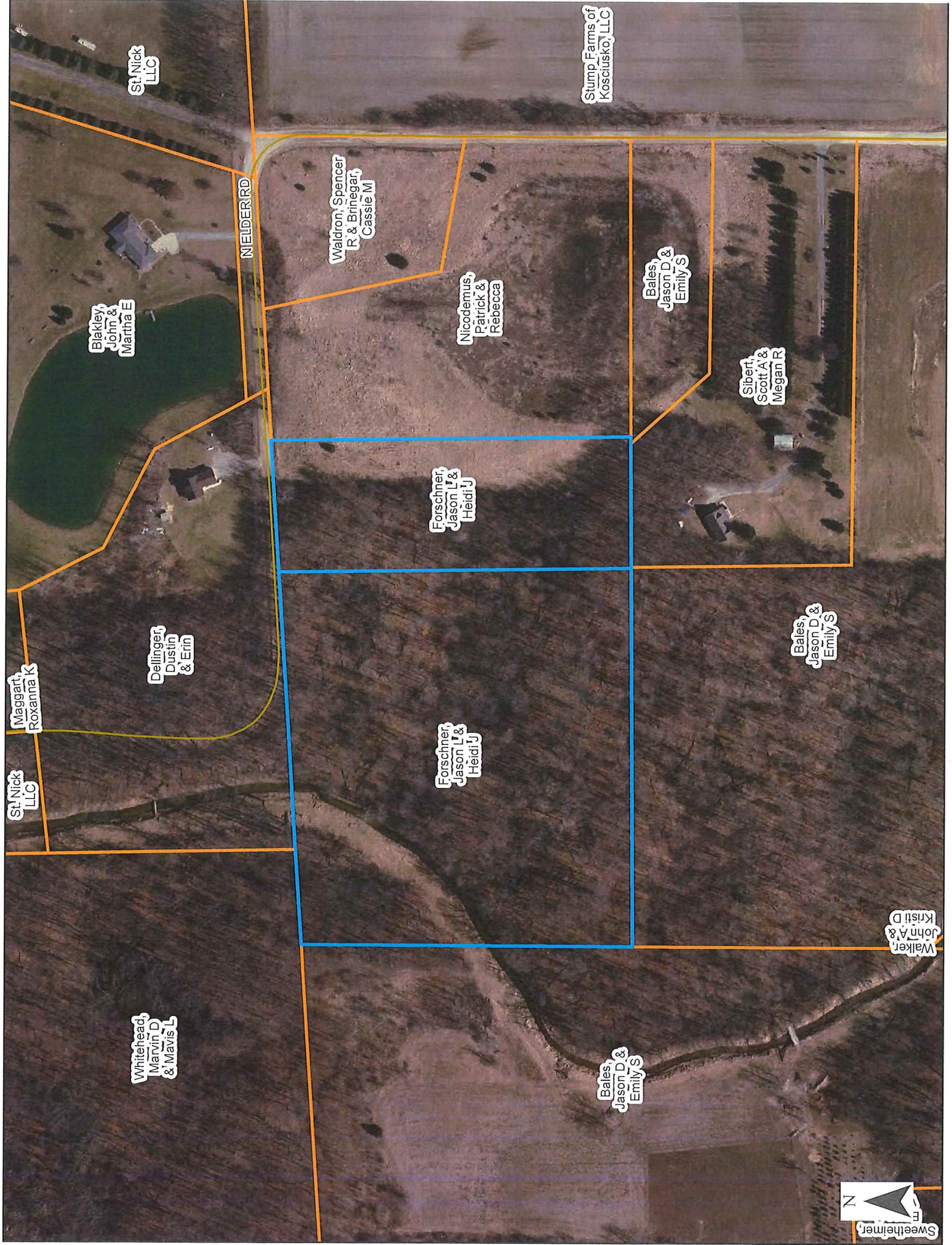
3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction or restriction of economic gain.

The proposed site of the house and garage is located on a slope of about 5%, dropping about 3’ from the road right-of-way to the south edge of the structure. To the south of the proposed site, the slope increases to about 10%. If the proposed structure were shifted southward to be compliant, the overall difference in elevation from the setback line to the south edge of appears to be approximately 7’. This does present a practical difficulty. However, given the size of the flatter part of the property, and the overall size of the property, there may be sufficient room to rearrange the proposed location in a way that would minimize the variance, or possibly avoid it altogether. Thus, the Board should evaluate if the requested location is the only possible site on the property.

Date report prepared: July 16, 2019.

BOARD OF ZONING APPEALS ACTION

Motion:	By:					Second by:
<i>Vote:</i>	Deckard	Denihan	Lopez	Wilkinson	Wright	
<i>Yes</i>						
<i>No</i>						
<i>Abstain</i>						



St. Nick
LLC

Stump Farms of
Kosciusko, LLC

Blakley,
John &
Martha E

NIELDER RD

Waldron, Spencer
R & Brinegar,
Cassie M

Nicodemus,
Patrick &
Rebecca

Bales,
Jason D &
Emily S

Sibert,
Scott A &
Megan R

Forschner,
Jason L &
Heidi J

Dellinger,
Dustin
& Erin

Maggart,
Roxanna K

St. Nick
LLC

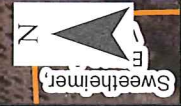
Forschner,
Jason L &
Heidi J

Bales,
Jason D &
Emily S

Whitehead,
Marvin D
& Mavis L

Bales,
Jason D &
Emily S

Walker,
John A &
Kristi D



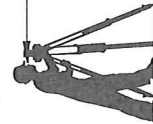
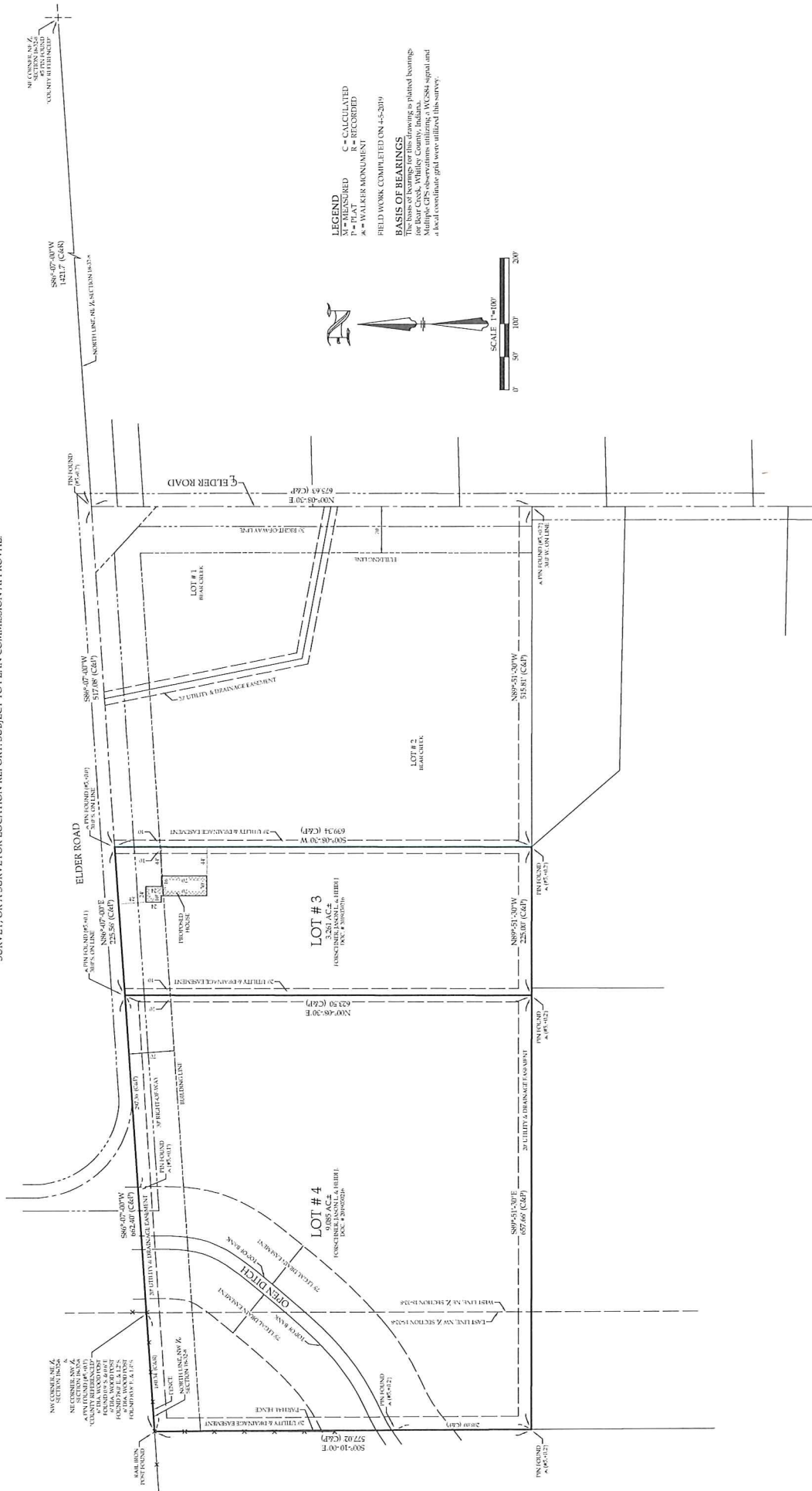
PLOT PLAN

PREPARED FOR

FORSCHNER, JASON L. & HEIDI J.

SITUATED IN THE PLAT OF BEAR CREEK, 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.



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LOTS NUMBERED 3 & 4 IN BEAR CREEK,
 WHITLEY COUNTY, INDIANA

FOR: FORSCHNER, JASON L. & HEIDI J.

LAND SURVEYING,
 CIVIL ENGINEERING,
 & LAND PLANNING

SCALE: 1"=100'
 DATE: 6-27-2019
 DRAWN BY: KBB
 PAGE: 1 OF 1

DRAWING NUMBER
 RW-101

