

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

20-W-VAR-1 DEVELOPMENT STANDARDS VARIANCE
Kenneth and Melissa Pinaire
6729 S. SR 105

**FEBRUARY 25, 2020
AGENDA ITEM: 1**

SUMMARY OF PROPOSAL

Current zoning: AG, Agricultural

Property area: 2.31± acres

The petitioners are requesting a development standards variance to permit the creation of a parcel that would not meet the minimum area or lot width. The property is located on the west side of State Road 105, approximately ¼ mile north of 700 South. The property is improved with a storage business and an outbuilding.

The petitioners acquired the northern portion of the property used for the storage business in 2017, which was at the time a 0.95-acre legal nonconforming Lot of Record.

In 2018, they acquired the southern part of the current parcel by a split from the field to the west. As a standalone parcel of 1.36 acres, it would not have met the required minimum lot area or lot width. To avoid a variance at that time, the 1.36 split parcel was combined with the 0.95-acre parcel to create the current 2.31-acre parcel.

The petitioners are now requesting to resplit the 2.31-acre parcel into the previous 0.95-acre and 1.36-acre components in order to sell the 1.36-acre parcel to the residential property to the south.

The 1.36-acre parcel will be combined with the residential property to be compliant with the zoning minimums. However, the 0.95-acre parcel has lost its legal nonconforming status as a Lot of Record, so returning to the previous size and shape necessitates 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 would not be injurious to the public health and safety, as the proposed parcel has long been established without injurious effects. Being that the property is non-residential with no need for a septic system—a major factor in the minimum lot area—the public health will be preserved. The general welfare is protected as this is a very specific case of a reversion to a previously legal nonconforming parcel that existed until less than two years ago. Additionally, the splits and combines are in conformance with subdivision/platting requirements.

Based on the past and proposed usage of the property, the staff does not believe the proposal would be injurious to public morals.

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 and value of the area adjacent to the property as the proposed changes would be a reversion to a situation of parcels and property that existed less than two years ago. Additionally, no changes to improvements or uses are proposed. The addition of acreage to the property to the south may have a positive impact on that property value.

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 terms of the Ordinance provide a mechanism of “grandfathering” nonconforming parcels as Lots of Record or generally as legal nonconforming. There is no mechanism to revert a compliant unplatted parcel to a previously legal nonconforming parcel, as in nearly all cases, doing so would be injurious to the public health, safety, and general welfare.

In this case, though, since the reversion is the product of what is effectively a temporary land swap, and since the subject property is non-residential, and in fact largely unoccupied most of the time, such injurious effects would not be present. So, this does appear to be a rare instance that the strict application of the minimum area and width regulations does result in a practical difficulty in reverting to what was a permissible condition a short time ago.

Date report prepared: 2/18/20.

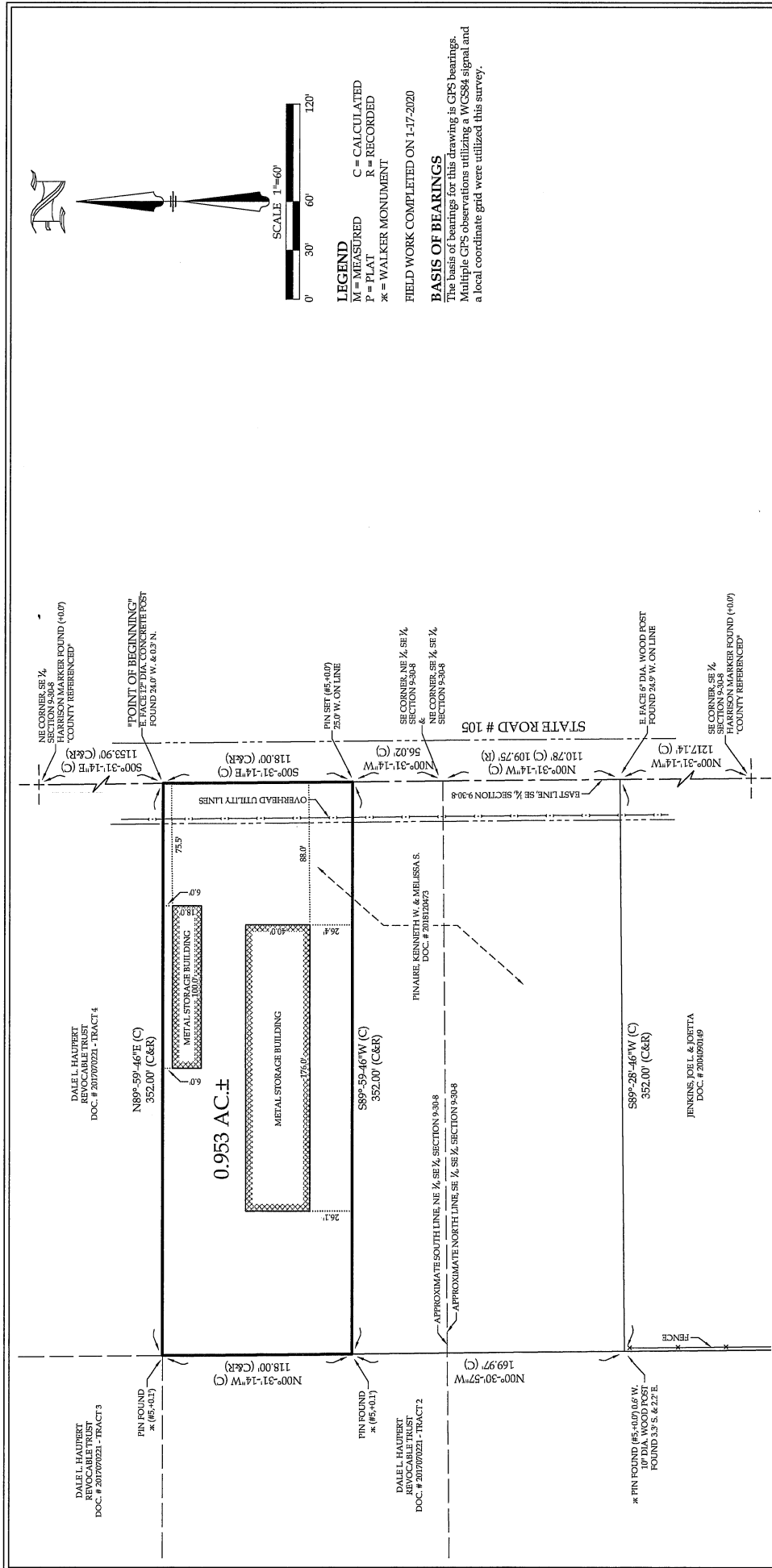
BOARD OF ZONING APPEALS ACTION

Motion:

By:

Second by:

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



DALE L. HAUTBERT
REVOCABLE TRUST
DOC. # 201707021 - TRACT 3

DALE L. HAUTBERT
REVOCABLE TRUST
DOC. # 201707021 - TRACT 4

DALE L. HAUTBERT
REVOCABLE TRUST
DOC. # 201707021 - TRACT 5

NE CORNER SE 1/4
SECTION 9-30-8
HARRISON MARKER FOUND (+0.07)
COUNTY REFERENCED

SE CORNER NE 1/4, SE 1/4
SECTION 9-30-8
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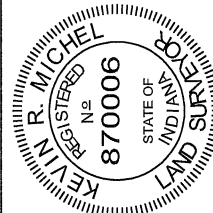
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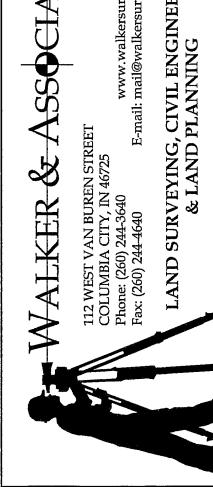
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CERTIFICATE OF SURVEY
I, THE UNDERSIGNED REGISTERED LAND SURVEYOR LICENSED IN COMPLIANCE WITH THE LAWS OF THE STATE OF INDIANA, HEREBY CERTIFY THE HEREON PLAT TO CORRECTLY REPRESENT A SURVEY AS MADE UNDER MY DIRECTION AND THAT THIS SURVEY AND ACCOMPANYING REPORT HAS BEEN COMPLETED IN ACCORDANCE WITH TITLE 86S-IAC 1-12 AND ALL OTHER AMENDMENTS THERETO.

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

**LAND SURVEYING, CIVIL ENGINEERING,
& LAND PLANNING**



PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 9,
TOWNSHIP 30 NORTH, RANGE 8 EAST, WHITLEY COUNTY, INDIANA

FOR: PINAIRE, KENNETH W. & MELISSA S.

SCALE: 1"=60'
DATE: 1-28-2020

DRAWN BY: KRM
PAGE: 3 OF 3

DRAWING NUMBER
QP-167 "B"

FIELD WORK COMPLETED ON 1-17-2020

BASIS OF BEARINGS
The basis of bearings for this drawing is GPS bearings.
Multiple GPS observations utilizing a WGS84 signal and
a local coordinate grid were utilized this survey.

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

