



MEETING RESULTS- ZIONSVILLE BOARD OF ZONING APPEALS October 11, 2016

The Regular meeting of the Zionsville Board of Zoning Appeals was scheduled Tuesday, October 11, 2016 at 6:30 p.m. in the Bev Harves Room at Zionsville Town Hall, 1100 West Oak Street.

The following items were scheduled for consideration:

- I. Pledge of Allegiance
- II. Attendance
- III. Approval of the August 9, 2016 and September 13, 2016 Meeting Minutes
- IV. Continuance Requests

Docket Number	Name	Address of Project	Item to be considered
			None at this time

V. Continued Business

Docket Number	Name	Address of Project	Item to be considered
2016-16-UV	M. Pittard	9810 and 9802 SR 32	Continued to the October 11, 2016 Board of Zoning Appeals Meeting at the request of a Remonstrator Continued to the November 9, 2016 Board of Zoning Appeals Meeting at the request of the Petitioner Petition for Use Variance to provide for the continued establishment of 2 (two) Commercial Uses on 1 (one) property (neither Business permitted by right)
2016-18-DSV	M. Lyons	8541 E. 500 South	Denied 0 in Favor 5 Opposed Petition for Development Standards Variance to provide for an accessory structure which does not comply with the Standards of the Zoning Ordinance (structure as contemplated, is not customarily associated with a residential area)
2016-23-SE	M. Squires	1567 N. 1000 East	Approved 5 in Favor 0 Opposed Petition for Special Exception to allow for a new residential building an (AG) Agricultural Zoning District

VI. New Business

Docket Number	Name	Address of Project	Item to be considered
2016-28-DSV	M. Squires	1567 N 1000 East	<p>Approved 5 in Favor 0 Opposed Petition for Development Standards Variance to provide for 2 (two) lots to:</p> <ol style="list-style-type: none"> 1) Exceed the required 3 to 1 lot width to depth ratio 2) Deviate from the required road frontage in the (AG) Rural Agricultural Zoning District
2016-24-SE	S. Cope	7750 E. 100 South (Est.)	<p>Approved 5 in Favor 0 Opposed Petition for Special Exception to allow for a new residential building an (AG) Agricultural Zoning District</p>
2016-25-DSV	C. Carnell	540 Isenhour Hills Drive	<p>Approved 5 in Favor 0 Opposed Petition for Development Standards Variance to exceed the (R-SF-2) Urban Residential Single Family Zoning District lot coverage requirement of 20%, to 24%, to allow for a walk way connecting the house to the pool, and pool surround.</p>
2016-26-DSV	M. Powell	360 W Linden Street	<p>Approved 5 in Favor 0 Opposed Previous Approved Variances #2001-13-DSV & #2013-06-DSV Rescinded by Board 5 in Favor 0 Opposed Petition for Development Standards variance in order to provide for the expansion of a garage to:</p> <ol style="list-style-type: none"> 1) Exceed the required lot coverage of 35%, to 51% 2) Deviate from the required side yard setback 3) Deviate from the required aggregate side yard setback 4) Deviate from the required rear yard setback in the (R-V), Residential Village Zoning District

2016-27-DSV	J. Urbanski	190 W Walnut Street	Approved 5 in Favor 0 Opposed Petition for Development Standards variance in order to provide for the installation of a two-car garage to: 1) Exceed the required lot coverage of 35%, to 46.2% 2) Deviate from the required front yard setback 3) Deviate from the required side yard setback in the (R-V), Residential Village Zoning District
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VII. Other Matters to be considered:

Docket Number	Name	Address of Project	Item to be considered
2016-20-DSV	PL Properties	8250 E. 100 South	Status of Right to Farm document, inclusive of BZA lot commitment
2016-22-DSV	S. Crenshaw	4560 S. 975 East	Status of Commitment

Respectfully Submitted:

Wayne DeLong AICP
Town of Zionsville
Director of Planning and Economic Development



Petition Number: 2016-18-DSV

Subject Site Address: 8541 E. 500 South

Petitioner: Michael Lyons

Representative: Michael Lyons

Request: Petition for Development Standards Variance to provide for an accessory structure which does not comply with the Standards of the Zoning Ordinance (structure as contemplated, is not customarily associated with a residential area)

Current Zoning: R1 Rural Residential Zoning District

Current Land Use: Residential

Approximate Acreage: Approximately 10.98 acre

Zoning History: None

Exhibits: Exhibit 1 – Staff Report
Exhibit 2 – Aerial Location Map
Exhibit 3 – Site Location map
Exhibit 4 – Structure Photos
Exhibit 5 - Petitioner's proposed Findings of Fact

Staff Reviewer: Wayne DeLong, AICP

PETITION HISTORY

This petition was continued from the September 13, 2016 meeting and will receive a public hearing at the October 11, 2016 Board of Zoning Appeals meeting.

PROPERTY HISTORY & ANALYSIS

The property is platted as Tract 4B in Brocks Meadow. The Town is unaware of any prior variances related to the property. Staff, however, would be remiss to not cover the permitting history which has resulted in the variance filing. In late 2015 the Petitioner installed two cargo containers (characteristics are illustrated in the Petitioner's submitted materials) on the subject site. Post installation, the Petitioner was contacted by the Town's Compliance officer related to the need for the issuance of a permit related to the two structures. The Petitioner complied with the requirement and applied for the permits, and the permits were issued. Subsequent to the issuance, Staff re-reviewed the issuance of the permits based on a complaint from an interested party. In that review, Staff found that the permits were issued in error as the characteristics of the structures were not customarily associated with a residential area (as required by the Town's Ordinance). With that in mind, the Petitioner removed one of the two structures from the property and subsequently has filed for zoning relief in an effort to seek permission to keep the second structure on the property.

VARIANCE FROM THE ZONING ORDINANCE

The need for the variance arises from the application of the Zoning Ordinance. In summary, the Petitioner has installed a metal shipping container on the property and the container is covered on all sides with earth (except for the doors). The Ordinance offers a definition of an "Underground Facility", however, the method of installation comes into question in order to meet the definition (example: if earth is excavated to accommodate the "Underground Facility", is this the sole way to meet the definition or can one have an "Underground Facility" by installing the facility first and then covering it with earthen material).

Staff has taken the position that the way to achieve the status of an "Underground Facility" is to install the facility in an area which has been excavated as to allow the facility to be installed below grade. Staff has not recognized the above grade method of installing the facility (which results in the facility being encased). The position of Staff has led the matter to be filed in the manner which has been presented to the Board of Zoning Appeals.

With the above in mind, one alternative left for the Petitioner was to pursue a variance which seeks to establish that the characteristics of the improvement are indeed residential in nature. In the opinion of Staff, the Petitioner has worked to minimize the visual impact of the structure (being a metal storage container). Alternatively, the Petitioner could have elected to wrap the metal storage container with siding and install a roof system which utilized residential characteristics (resulting in a structure which, arguably is customarily associated with a residential area). Given the current method of installation, Staff does not have concerns with the presence of the container in the manner which it has been installed.

Staff, however, does have two concerns:

- 1) Metal Storage Containers are not originally designed for occupancy. Most conversions which Staff is familiar with result in the installation of new entry doors (as the container's doors are not designed to be opened from the inside). Further, Staff is unclear as to the structural integrity of walls, means for air exchange, and other necessary life/safety items intended to ensure the safety of a party occupying the structure (even in an emergency). If the Container can be utilized in a method which is safe, Staff is supportive of the request.
- 2) Opinions of Neighbors. Staff draws the attention of the Board of Zoning Appeals to the origin of the Petition's filing – a complaint from an interested party. Barring concerns which are not addressed during the normal hearing process to the satisfaction of the Board of Zoning Appeals, Staff is supportive of the request.

PROCEDURAL – VARIANCE TO DEVIATE FROM STANDARDS

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

- (a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;*
- (b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;*
- (c) the strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property;*

Proposed Findings of Fact are attached for the Board of Zoning Appeal's consideration.

STAFF RECOMMENDATIONS

Staff recommends approval of the design standards variance included in Docket #2016-07-DSV,

RECOMMENDATION MOTION

I move that Docket #2016-18-DSV Design Standards Variance to provide for an accessory structure which does not comply with the Standards of the Zoning Ordinance (structure as contemplated, is not customarily associated with a residential area) in the R1 Rural Residential Zoning District be (Approved based upon the findings in the staff report / Approved as Requested / Denied/ Continued) as presented.

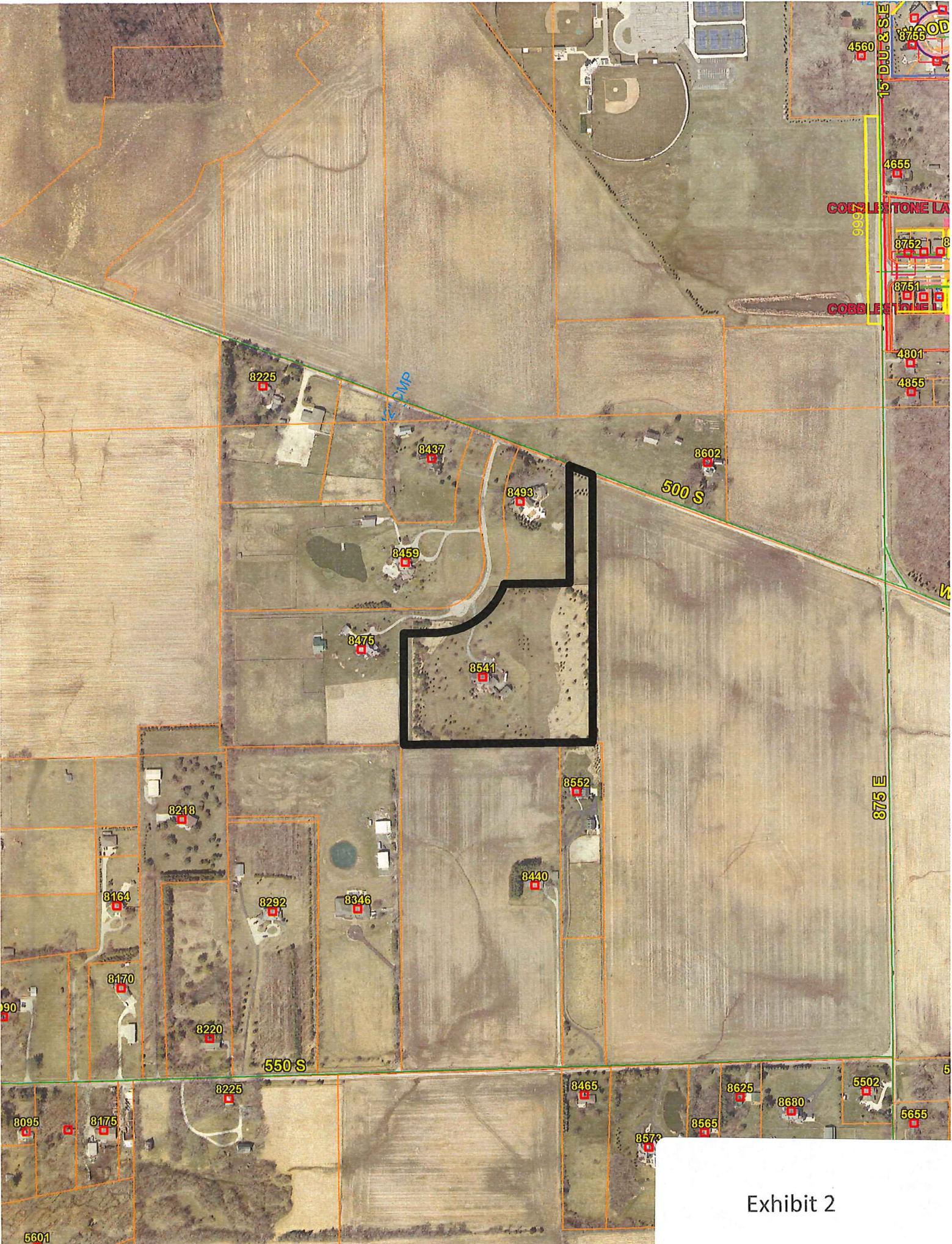
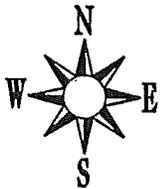


Exhibit 2



**PLAT OF SURVEY
BROCKS MEADOW**

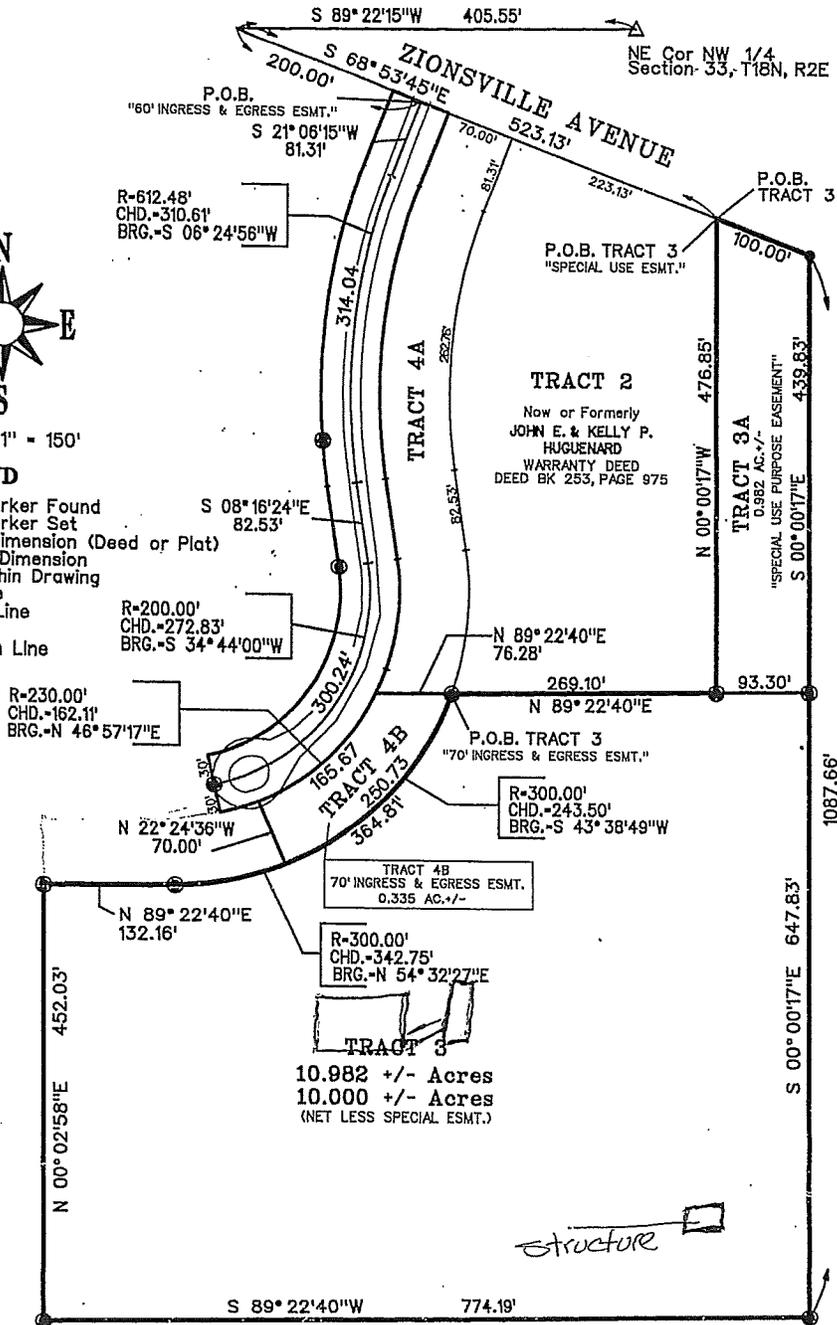
ZIONSVILLE ROAD
ZIONSVILLE, EAGLE TOWNSHIP,
BOONE COUNTY, INDIANA
PROJECT 98S0412



SCALE: 1" = 150'

LEGEND

- Survey Marker Found
- Survey Marker Set
- (R) Record Dimension (Deed or Plat)
- (M) Measured Dimension
- (typ) Typical Within Drawing
- - - Fence Line
- PL Property Line
- CL Centerline
- OC Occupation Line



SURVEYING AND MAPPING
113 South Center Street, Plainfield, IN. 46168
VOICE (317) 838-0521 FAX (317) 838-0529
Surveyors Proj. No.:98S0412 File No.: 18N02E33.41

Revised 10/13/98
Add Tract Number

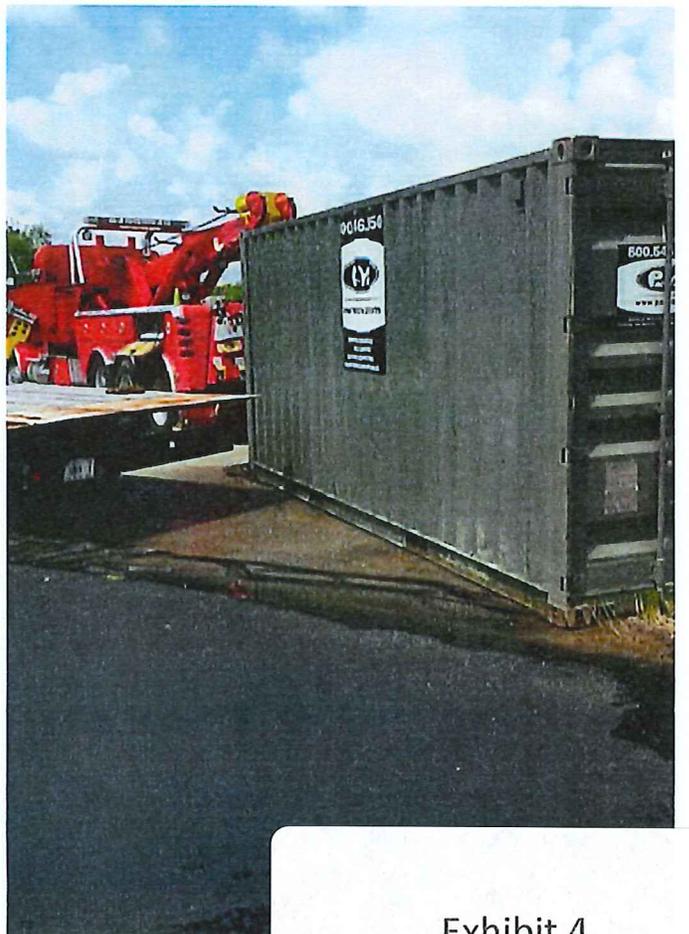


Exhibit 4

TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant (will / will not) be injurious to the public health, safety, morals, and general welfare of the community because:

THIS TORNADO SHELTER IS NOT VISIBLE TO ANYONE IN THE AREA. IT MAY ALSO SHELTER OUR NEIGHBORS FROM TORNADO DAMAGE AS IT DID MY FAMILY AUGUST 15TH & 24TH OF THIS YEAR.

2. The use or value of the area adjacent to the property included in the variance (will / will not) be affected in a substantially adverse manner because:

THIS SHELTER IN NO WAY AFFECTS THE PROPERTY ADJACENT TO IT. IT COULD POSITIVELY AFFECT THE ADJACENT PROPERTY OWNERS IF AGAIN PLACED IN A SITUATION WHERE APPROXIMATING STORMS DICTATED ITS USE.

3. Strict application of the terms of the zoning ordinance (will / will not) result in unnecessary hardships in the use of the property because:

STRICT APPLICATION OF THE ORDINANCE COULD LEAVE MY FAMILY WITH OUT AN "ACCEPTABLE" SHELTER FROM A TORNADO OR OTHER SEVERE WEATHER EVENT.

DECISION

It is therefore the decision of this body that this VARIANCE petition is APPROVED/DENIED.

Adopted this _____ day of _____, 201__.



Petition Number: 2016-23-SE

Subject Site Address: 1567 N. 1000 East

Petitioner: Madalyn Squires

Representative: Michael Andreoli

Request: Petition for Special Exception to allow for a new residential building within the (AG) Agricultural Zoning District

Current Zoning: AG Agricultural District (Rural)

Current Land Use: Agricultural & Residential

Approximate Acreage: 20 acres

Zoning History: 2016-28-DSV (Pending) 2016-44-MP (Approved, conditionally)

Exhibits:
Exhibit 1 – Staff Report
Exhibit 2 – Aerial / Location Map
Exhibit 3 – Site Plan
Exhibit 4 – Petitioner’s Narrative
Exhibit 5 – Findings of Fact

Staff Reviewer: Wayne DeLong, AICP

PETITION HISTORY

This Petition will receive a public hearing at the October 11, 2016, Board of Zoning Appeals meeting (Petition was continued from the September meeting at the request of the Petitioner). There is no evidence of a prior approval for Special Exception for the existing dwelling. A Petition for Minor Plat approval was heard by the Plan Commission at its September 19, 2016 meeting (and received conditional approval).

PROPERTY HISTORY

The property is comprised of three (3) tracks, two (2) of which are 40+/- acres, and one (1) which is 80 +/- acres, and is presently zoned for both residential and agricultural purposes.

ANALYSIS

Based on the applicant's interest in constructing a single-family dwelling on acreage zoned AG, the applicant is required to request a Special Exception. The purpose of the AG agricultural district is to encourage agricultural operations while allowing for limited residential development. While the Petition represents an expansion of residential development in the AG district, the area proposed to be improved with the new dwelling is to be located along an existing common driveway (with the new dwelling being located in-between two existing single-family dwellings).

RIGHT TO FARM / PROXIMITY TO AIRPORT

As stated in the Zoning Ordinance, the Applicant for a Special Exception acknowledges and/or agrees that agricultural uses are permitted in the surrounding area, no agricultural or agri-business operation in the area shall be or become a nuisance, and to not object to the continuation of any such agricultural or agri-business operation in the surrounding area as long as such operation does not constitute a nuisance. This acknowledgement will be required to be reduced to writing as a part of the Petition process.

And, while the north-south runway of the Indianapolis Executive Airport is within approximately two (2) miles of the subject site, the Zoning Ordinance does not require any special notice or restrictions associated with the proposed dwelling's proximity to the facility. It is mentioned here in this report only as a courtesy to the Petitioner.

PROCEDURAL – CONSIDERATION OF A SPECIAL EXCEPTION PETITION SEEKING APPROVAL FOR THE LOCATION OF A DWELLING IN THE AGRICULTURAL DISTRICT

The Board of Zoning Appeals shall hear, and approve or deny, all requests for Special Exception requests as provided for by the Zionsville Zoning Ordinance. A Special Exception may be approved only upon written determination that:

- (a) The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;*

(b) The proposed use will not injure or adversely affect the adjacent area or property values therein; and

(c) the proposed use will be consistent with the character of the District, land uses authorized therein and the Town of Zionsville Comprehensive Plan.

Proposed Findings of Fact are attached for the Board of Zoning Appeal's consideration.

STAFF RECOMMENDATIONS

Staff recommends approval of the special exception Petition included in Docket #2016-23-SE.

RECOMMENDATION MOTION

I move that Docket #2016-23-SE special exception Petition in the Agricultural District for the property located at 1567 N. 1000 East, Sheridan IN 46069 be (Approved based upon the staff report and the proposed findings / Denied / Continued) as presented (If approved, it shall be required that the Petitioner execute the Right-to-Farm acknowledgement documentation).

PROCEDURAL NOTES

ROAD FRONTAGE / LOT DEPTH TO WIDTH RATIO

As indicated in the Petitioner's filing, the new single-family dwelling is intended to be located on a 20 acre parcel deriving access from a common drive. In order to facilitate the division of the parent tracts, a plat petition has been filed with the Plan Commission for its consideration at its September meeting. Additionally, the Petitioner is aware that obtaining a variance from the Board of Zoning Appeals (specific to lot frontage and depth to width) is also required (in order to facilitate the buildability of the lot which is created from the contemplated division).

FLOOD ZONE

As a portion of the property is within the Special Flood Hazard Area (SFHA) associated with the Eagle Creek, it is subject to additional development restrictions (limitations of size, placement, and floor elevation of buildings). Dependent on the location of any contemplated improvements, approvals from the Federal Emergency Management Agency, Indiana Department of Natural Resources, the Boone County Surveyor, and / or the Town (in conjunctions with the Town's Ordinance for Flood Hazard Areas) may be necessary (specific to the SFHA).

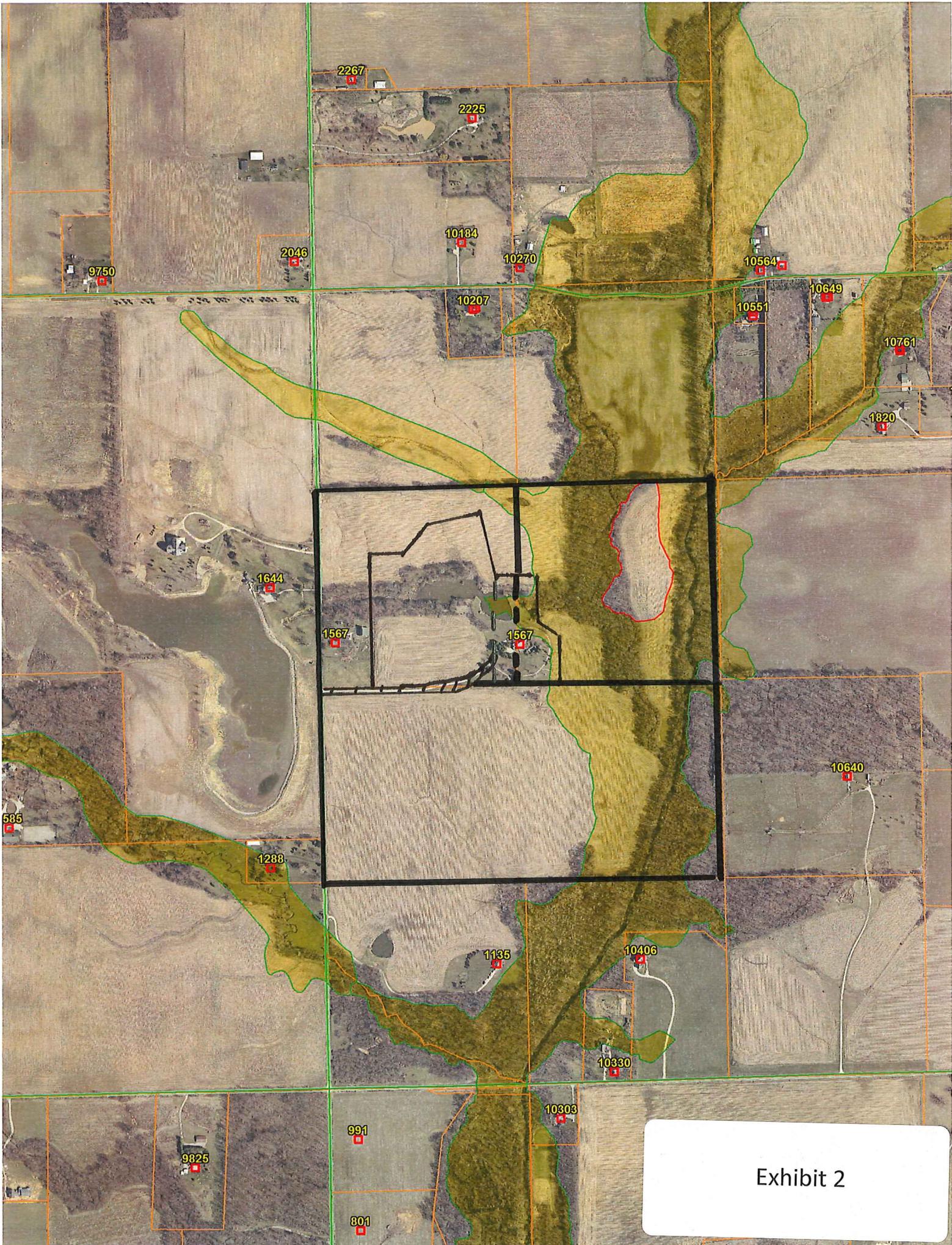


Exhibit 2

04 DEGREES 10 MINUTES 01 SECONDS WEST 284.02 FEET; PASSING THE SOUTH LINE OF SAID PARCELS, SOUTH 04 DEGREES 10 MINUTES 01 SECONDS WEST 147.40 FEET; THENCE SOUTH 88 DEGREES 50 MINUTES 39 SECONDS WEST 671.10 FEET; THENCE SOUTH 78 DEGREES 02 MINUTES 11 SECONDS WEST 147.40 FEET; THENCE SOUTH 83 DEGREES 00 MINUTES 43 SECONDS WEST 132.40 FEET; THENCE SOUTH 89 DEGREES 33 MINUTES 28 SECONDS WEST 539.38 FEET; NORTH 01 DEGREE 06 MINUTES 33 SECONDS WEST 50.00 FEET TO THE POINT OF BEGINNING, CONTAINING 20.37 ACRES, MORE OR LESS.

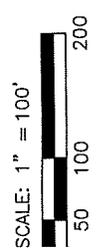
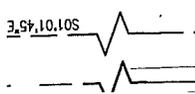
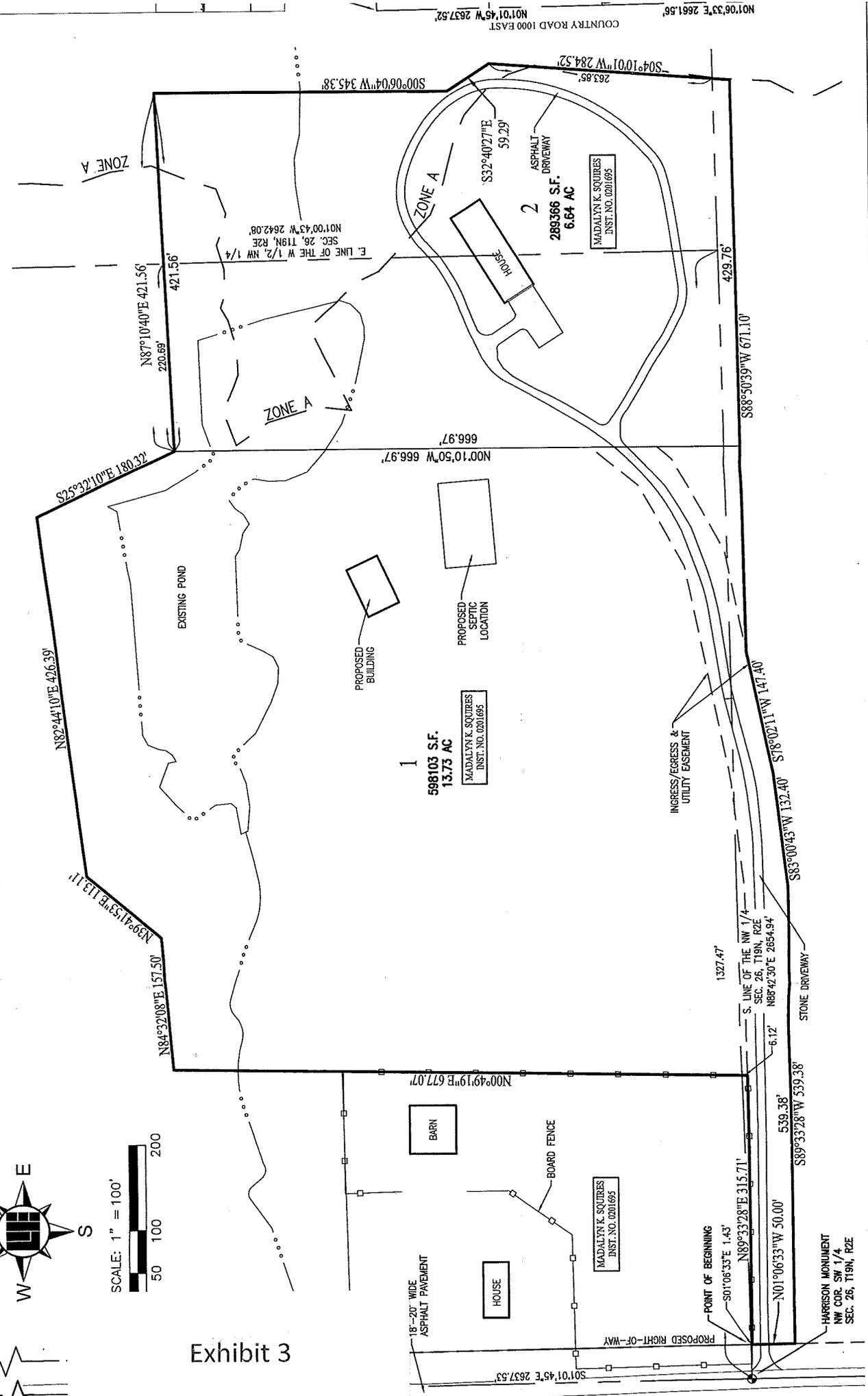


Exhibit 3



This instrument prepared for:

MADALYN K. SQUIRES F

Narrative

Petitioner requests a Special Exception to construct a Single Family Residence on Lot Number 1 (13.73 acres). Further, the Minor Plat will allow Dr. Squires existing home on Lot 2 (6.64 acres) to be sold. Petitioner will commit to no further splits on the remaining farm land acreage she owns. The proposed site of the septic system and proposed building site have been located and the primary residence for Lot 1 is under architectural design. Please note that when Dr. Squires took title to the property in December 2001, this was by Quitclaim Deed as her marriage was dissolved in September 1997 and she was the owner, together with her then husband, well prior to 1999.

Petition No. 2016-23-SE

M. Squires

**TOWN OF ZIONSVILLE
BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA**

PETITION FOR SPECIAL EXCEPTION

FINDINGS OF FACT

1. The proposed use **will not** be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare because:

The proposed building Lot is 13.73 acres and is suitable for well and septic.

2. The proposed use **will not** injure or adversely affect the adjacent area or property values because:

Applicant owns all adjacent property and it consists of combined AG and residential.

3. The proposed use **will** be consistent with the character of the District, land uses authorized therein and the of Zionsville Comprehensive Plan because:

Residential is a permitted use in the AG District by way of Special Exception.

DECISION

It is therefore the decision of this body that this **SPECIAL EXCEPTION** Petition is **APPROVED/DENIED**.

Adopted this _____ day of _____, 2016.



Petition Number: 2016-28-DSV

Subject Site Address: 1567 N. 1000 East

Petitioner: Madalyn Squires

Representative: Michael Andreoli

Request: Petition for Development Standards Variance of minimum Lot Ratio requirements and Road Frontage requirements to construct a new residential building within the (AG) Agricultural Zoning District.

Current Zoning: AG Agricultural District (Rural)

Current Land Use: Agricultural & Residential

Approximate Acreage: 20 acres

Zoning History: 2016-23-SE (Pending) 2016-44-MP (Approved, conditionally)

Exhibits: Exhibit 1 – Staff Report
Exhibit 2 – Aerial / Location Map
Exhibit 3 – Site Plan
Exhibit 4 – Petitioner’s Narrative
Exhibit 5 – Findings of Fact

Staff Reviewer: Wayne DeLong, AICP

PETITION HISTORY

This Petition will receive a public hearing at the October 11, 2016, Board of Zoning Appeals meeting. A Petition for Special Exception for the existing dwelling is also scheduled to be heard at the October 11, 2016, Board of Zoning Appeals meeting. A Petition for Minor Plat was approved by the Plan Commission at its September 19, 2016 meeting (subject to the outcome of the Board of Zoning Appeals hearing process).

PROPERTY HISTORY

The site is currently comprised of three (3) tracks, but, upon recordation of the proposed plat two lots of record will be established.

VARIANCE REQUEST

As proposed, a new single-family dwelling is contemplated to be constructed on a lot with 50 feet of frontage on a Public Street (while it would have of 400 feet of frontage on a proposed access easement). Currently the overall site is improved with one (1) existing single family dwelling with zero (0) feet of frontage on a Public Street (which will remain as a part of the overall project).

The need for the variances arise as the contemplated configuration of the division of the parcel deviates from minimum standards found in the Zoning Ordinance related to lot depth to width ratios as well as road frontage requirements. As the current site is improved with a dwelling which has zero feet of frontage, any reasonable actions to establish access in perpetuity (via easement, platting, or both) is an action which is supported by the Staff. Further, large estate type parcels are a developing land use pattern in this quadrant of Zionsville (with only a percentage requiring variance relief in order to improve the property for estate residential use). With the establishment of the access easement associated with 2016-44-MP and the approval criteria associated with 2016-23-SE (including the Right to Farm language and the advisory information related to the Indianapolis Executive Airport), Staff supports the variance requests.

PROCEDURAL – VARIANCE TO DEVIATE FROM STANDARDS

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

- (a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*
- (b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*
- (c) the strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property:*

Proposed Findings of Fact are attached for the Board of Zoning Appeal's consideration.

STAFF RECOMMENDATIONS

Staff recommends approval of the design standards variance included in Docket #2016-28-DSV, as filed.

RECOMMENDATION MOTION

I move that Docket #2016-28-DSV design standards variance petition of Lot Ratio and Road Frontage to construct a new residential building in the Agricultural District for the property located at 1567 N. 1000 East, Sheridan IN 46069 be (Approved as filed, based upon the findings of fact / Denied/ Continued) as presented.

PROCEDURAL NOTES

LEGAL DRAIN

As a portion of the property is within the Special Flood Hazard Area (SFHA) associated with a Legal Drain, it is subject to additional development restrictions (limitations of size, placement, and floor elevation of buildings). Dependent on the location of any contemplated improvements, approvals from the Federal Emergency Management Agency, Indiana Department of Natural Resources, the Boone County Surveyor, and / or the Town (in conjunctions with the Town's Ordinance for Flood Hazard Areas) may be necessary (specific to the SFHA).

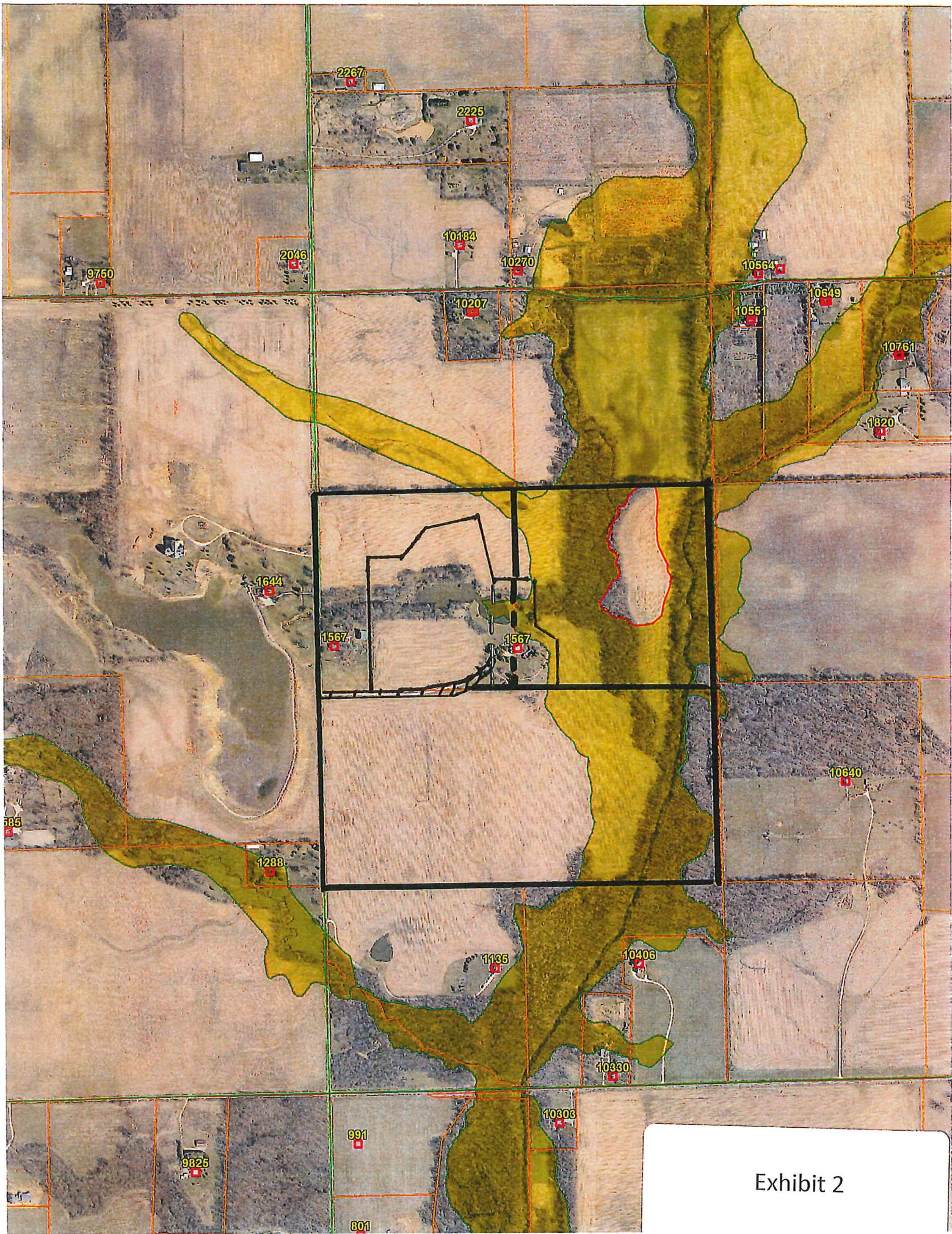
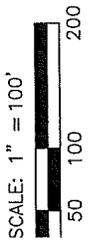
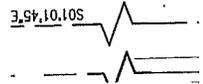


Exhibit 2



04 DEGREES 10 MINUTES 11 SECONDS WEST 1.264.52 FEET; PASSING THE SOUTH LINE OF SAID PARCELS; THENCE SOUTH 88 DEGREES 50 MINUTES 38 SECONDS WEST 671.10 FEET; THENCE SOUTH 78 DEGREES 02 MINUTES 11 SECONDS WEST 147.40 FEET; THENCE SOUTH 88 DEGREES 50 MINUTES 38 SECONDS WEST 132.40 FEET; THENCE SOUTH 89 DEGREES 33 MINUTES 28 SECONDS WEST 539.38 FEET; NORTH 01 DEGREE 06 MINUTES 33 SECONDS WEST 50.00 FEET TO THE POINT OF BEGINNING, CONTAINING 20.37 ACRES, MORE OR LESS.

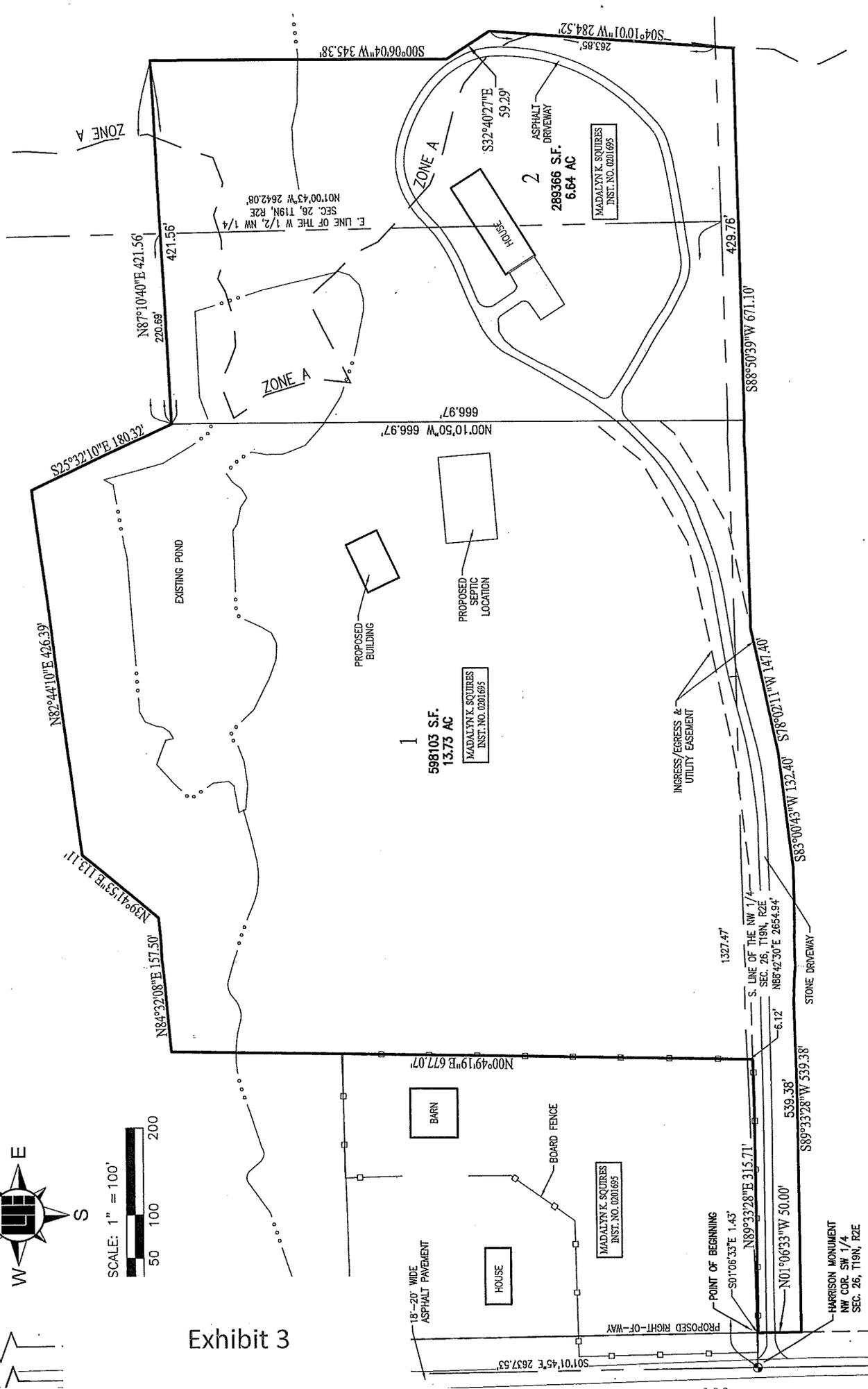


Exhibit 3

This instrument prepared for:
MADALYN K. SQUIRES I

COUNTRY ROAD 1000 EAST
 N01°06'33"E 2637.53'
 N01°06'33"E 2637.52'
 N01°06'33"E 2661.56'

NARRATIVE

The Plat contains a 50' road frontage on Lot No. 1 that will also serve Lot No. 2 as a Defined Ingress-Egress and Private Drive. To the extent necessary, the Applicant requests a Variance of Road Frontage to serve Lot No. 2. Further due to the configuration of the Lots and the Private Drive, a 3 to 1 Lot Width Ratio Variance is necessary.

Petition No. # 2016-28-DSV

**TOWN OF ZIONSVILLE
BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA**

**PETITION FOR VARIANCE
OF DEVELOPMENT STANDARDS**

FINDINGS OF FACT

1. The grant **will not** be injurious to the public health, safety, morals and general welfare of the community because:

The private drive and right-of-way will serve two (2) Lots only using a county road cut that has been existing for twenty-five (25) years. Quasi-public access to serve the Lots has been preserved by the Declaration of Covenants.

2. The use or value of the area adjacent to the property included in the Variance **will not** be affected in a substantially adverse manner because:

The plat and Lots are consistent with those properties in the area and Applicant owns adjacent and surrounding property.

3. Strict application of the terms of the Zoning Ordinance **will** result in unnecessary hardships in the use of the property because:

The existing lane was constructed years ago and another road cut to serve either Lot would create an unnecessary hardship.

#2016-28-DSV

DECISION

It is therefore the decision of this body that this **VARIANCE** petition is
APPROVED/DENIED.

Adopted this _____ day of _____, 2016.



Petition Number: 2016-24-SE

Subject Site Address: 7750 East 100 South (unassigned address)

Petitioner: Shane Cope

Representative: Dale Kruse

Request: Petition for Special Exception to allow for a new residential building an (AG) Agricultural Zoning District

Current Zoning: Agricultural District (Rural)

Current Land Use: Agricultural

Approximate Acreage: 29.18 acres

Zoning History: none

Exhibits: Exhibit 1 – Staff Report
Exhibit 2 – Aerial Location Map
Exhibit 3 – Survey
Exhibit 4 – Findings of Fact

Staff Reviewer: Wayne DeLong, AICP

PETITION HISTORY

This Petition will receive a public hearing at the October 11, 2016, Board of Zoning Appeals meeting.

PROPERTY HISTORY

The acreage associated with this petition has historically been utilized for agricultural purposes and has supported administrative subdivision procedures (conveyance of land to adjoining land owners).

ANALYSIS

Based on the applicant's interest in constructing a single-family dwelling on acreage zoned AG, the applicant is required to request a Special Exception. The purpose of the AG agricultural district is to encourage agricultural operations while allowing for limited residential development. The Petition represents a limited presence of residential development in the AG district (and is consistent with the development pattern on the north side of County Road 100 South).

RIGHT TO FARM / PROXIMITY TO AIRPORT

As stated in the Zoning Ordinance, the Applicant for a Special Exception acknowledges and/or agrees that agricultural uses are permitted in the surrounding area, no agricultural or agri-business operation in the area shall be or become a nuisance, and to not object to the continuation of any such agricultural or agri-business operation in the surrounding area as long as such operation does not constitute a nuisance. This acknowledgement will be required to be reduced to writing as a part of the Petition process.

And, while the north-south runway of the Indianapolis Executive Airport is within approximately 3.5 miles of the subject site, the Zoning Ordinance does not require any special notice or restrictions associated with the proposed dwelling's proximity to the facility. It is mentioned here in this report only as a courtesy to the Petitioner.

PROCEDURAL – CONSIDERATION OF A SPECIAL EXCEPTION PETITION SEEKING APPROVAL FOR THE LOCATION OF A DWELLING IN THE AGRICULTURAL DISTRICT

The Board of Zoning Appeals shall hear, and approve or deny, all requests for Special Exception requests as provided for by the Zionsville Zoning Ordinance. A Special Exception may be approved only upon written determination that:

- (a) The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;*
- (b) The proposed use will not injure or adversely affect the adjacent area or property values therein; and*

(c) the proposed use will be consistent with the character of the District, land uses authorized therein and the Town of Zionsville Comprehensive Plan.

Proposed Findings of Fact are attached for the Board of Zoning Appeal's consideration.

STAFF RECOMMENDATIONS

Staff recommends approval of the special exception Petition included in Docket #2016-24-SE.

RECOMMENDATION MOTION

I move that Docket #2016-24-SE special exception Petition in the Agricultural District for the property located at be (Approved based upon the staff report and the proposed findings / Denied / Continued) as presented (If approved, it shall be required that the Petitioner execute the Right-to-Farm acknowledgement documentation).

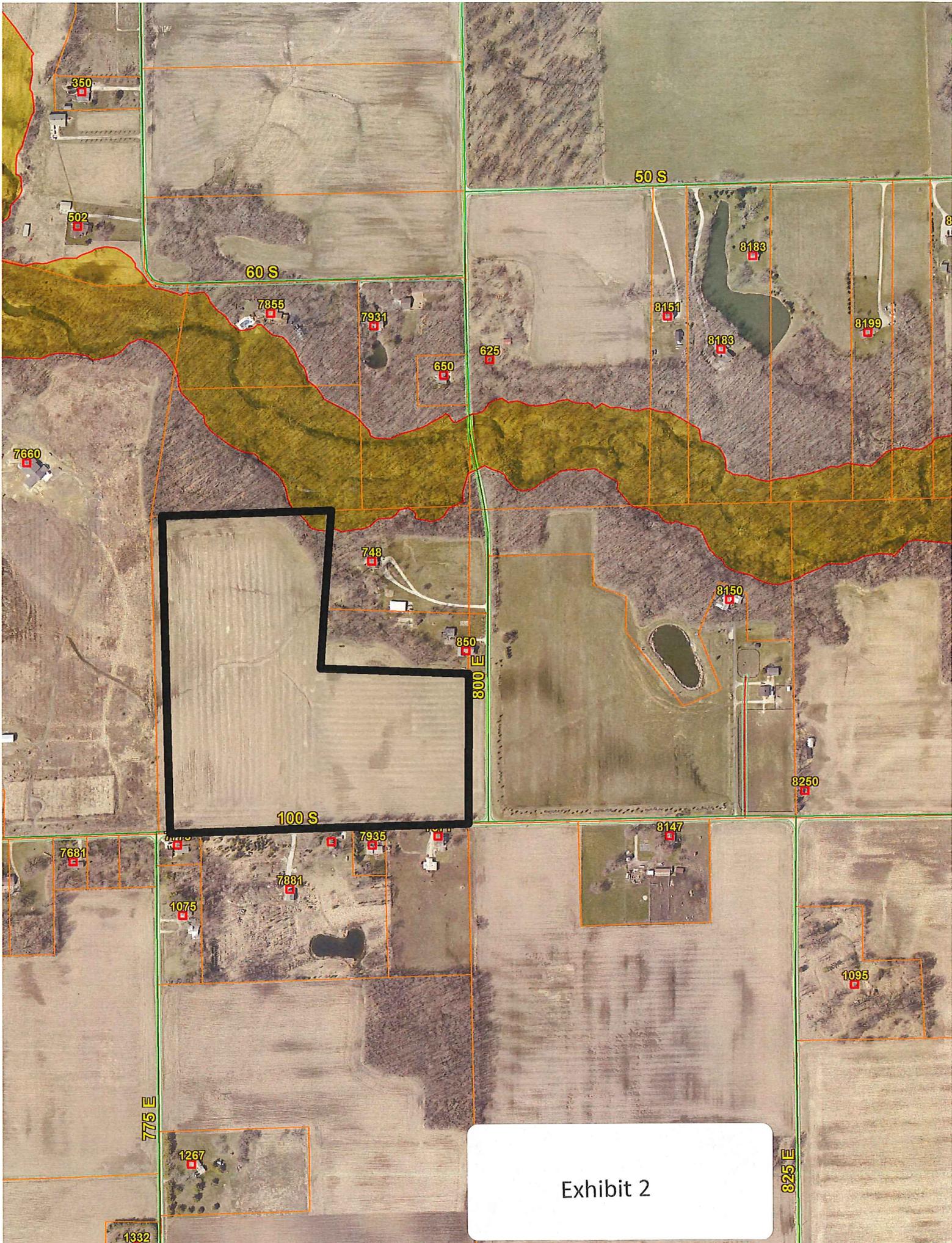


Exhibit 2

**TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA**

PETITION FOR SPECIAL EXCEPTION

FINDINGS OF FACT

1. The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;
 - Because we will be using the proposed land for building a single family home, similar to other parcels/ homes in the area that have already been used for this purpose.

2. The proposed use will not injure or adversely affect the adjacent area or property values therein; and
 - Because we will be building a similar home in size and form as homes already in the area.

3. The proposed use **will** be consistent with the character of the District, land uses authorized therein and the Town of Zionsville Comprehensive Plan.
 - The single family home we will build will be similar in size and form as other homes in the area. We will use the land in a similar fashion to those residences already in the area.

DECISION

It is therefore the decision of this body that this SPECIAL EXCEPTION petition is APPROVED/DENIED.

Adopted this _____ day of _____, 201__.



Petition Number: 2016-25-DSV

Subject Site Address: 540 Isenhour Hills Drive

Petitioner: Tom & Christine Briere

Representative: Chris Carnell

Request: Petition for Development Standards Variance to exceed the (R-SF-2) Urban Single Family Residential Zoning District lot coverage requirement of 20%, to 24%, to allow for a stone paver pool surround, stone paver deck, and stone paver walkway system to be installed on the property.

Current Zoning: (R-SF-2) Urban Residential Single Family Zoning District

Current Land Use: Single-family residential

Approximate Acreage: 0.56 acres

Zoning History: None

Exhibits: Exhibit 1 – Staff Report
Exhibit 2 – Aerial Location Map
Exhibit 3 – Site Plan
Exhibit 4 – Petitioners Cover Letter
Exhibit 5–Petitioners proposed Findings of Fact

Staff Reviewer: Wayne DeLong, AICP

PETITION HISTORY

This petition will receive a public hearing at the October 11, 2016, Board of Zoning Appeals meeting.

PROPERTY HISTORY

The property is comprised of approximately 0.56 acres of Part of Lot 6 in the Isehour Hills subdivision of the Town of Zionsville.

ANALYSIS

The 0.56-acre parcel is currently improved with a 4,365 square foot single-family dwelling and associated accessory uses. As proposed, the Petitioner is seeking approval to improve the parcel with a 962 square foot deck (and walkways) comprised of stepping stones and crushed aggregate. The addition of the deck and pathway system to the site will exceed the 20% lot coverage requirement by 4%.

LOT COVERAGE

Per the R-SF-2 Urban Residential Single Family Zoning District regulations, lot coverage standards states the maximum lot coverage is 20 percent, and, because of minimum lot sizes in the R-SF-2 District, likely contributes to Board of Zoning Appeals seldom being requested to consider coverage deviation filings in the R-SF-2 District.

Generally speaking, Staff's support of these types of requests, which provide for a minor deviation from the lot coverage requirements, typically follows this general reasoning: 1) the request is seeking to improve the site with an accessory use commonly enjoyed by other properties in the area, and 2) other properties within proximity to the parcel enjoy deviations from the maximum lot coverage requirements.

Specific to this petition request, while other properties in the area enjoy the use of a pool as an accessory use, staff is unaware of any prior variances in the area for lot coverage deviations. With that in mind, and based on ordinance requirements, Staff would generally not be inclined to support the requested variance. However, the petitioner's pool improvement, as a stand-alone project, conforms to the lot coverage maximums – what drives the overall project over the maximums is the deck which both surrounds and is in proximity to the contemplated pool and the associated walkways. As proposed, the deck and walkways are to be constructed of stepping stones separated by crushed aggregate (all designed around the concept of creating a non-impervious surround for the pool). Given the at grade nature of the contemplated pool surround, deck, and walkway system, and that it will function as a non-impervious surface, Staff is supportive of the requested variance (given the contemplated characteristics of the improvements).

PROCEDURAL – VARIANCE TO DEVIATE FROM STANDARDS

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

- (a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*
- (b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*
- (c) the strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property:*

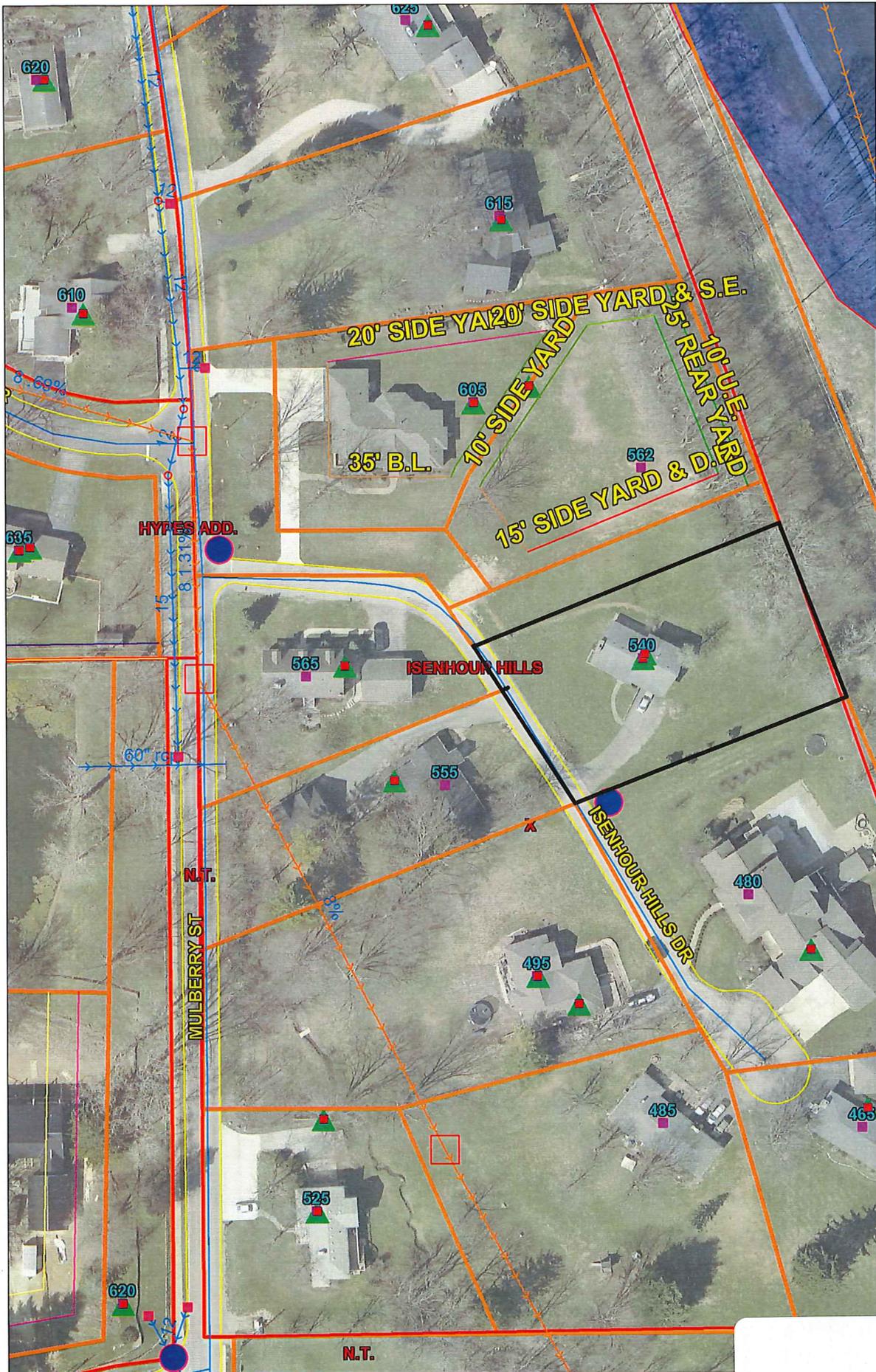
Proposed Findings of Fact are attached for the Board of Zoning Appeal’s consideration.

STAFF RECOMMENDATIONS

Staff recommends approval of the design standards variance included in Docket #2016-25-DSV, as filed.

RECOMMENDATION MOTION

I move that Docket #2016-25-DSV design standards variance to exceed the (R-SF-2) Urban Single Family Residential Zoning District lot coverage requirement of 20%, to 24%, to allow for a stone paver pool surround, stone paver deck, and stone paver walkway system be (Approved as filed, based upon the findings of fact / Denied/ Continued) as presented.



Zionsville Corporate Li	
Feature Name:	
	Zionsville Rural Serv
	Zionsville Town Serv
Flood Hazard BC 2013	
FLD_ZONE:	
	AE
	X
BuildingPermits	
Status:	
	active
Sewer Pipes	
Force Main:	
	no
	Regional Counties
	Townships
	Parcels
	Boone Subdivisions
	ZFD Structures
	Storm Manhole
	Sewer Manhole
	ZFD Fire Hydrants
	Boone County Address
	1980s Building Permit
	1990s Building Permit
	2004 Building Permit
	2006 Building Permit
	2007 Building Permit
	2008 Building Permit
	2009 Building Permit
	2010 Building Permit
	Permit
	Regional Count
	Edge of Pavement
	Storm Pipes
	ZFD Structures
	ZFD Drives
	Roads
	Highways
	Urban District R

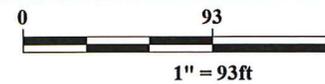


Exhibit 2

Exhibit B

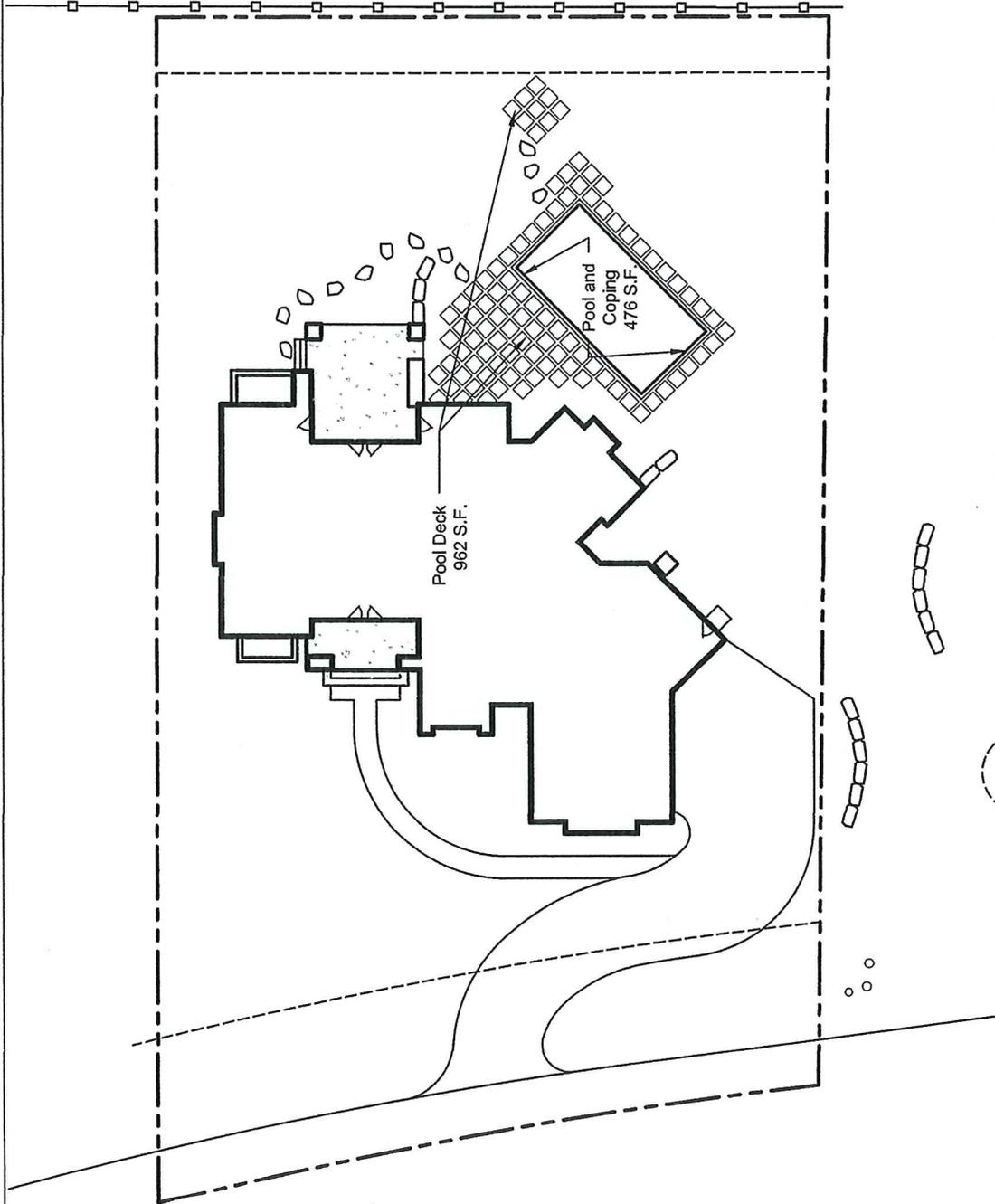
Briere Residence

C.S. Homes
540 Isehour Hills Drive
Zionsville, Indiana

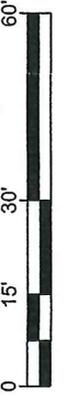
Approved by: _____

Date: _____

Landscape
08/24/16



SCALE: 1" = 30'-0"



This landscape design is a guide for plant placement and hardscape layouts. Any changes to design installation causing price changes will need to be signed off on by client and designer.

Landscape lighting, invisible fencing and irrigation lines & heads must be noted to us by client or any repairs will be clients responsibility.

Fortville, Indiana
P.O. Box 314
Phone: (317) 485-8514
Fax: (317) 485-7555
shaneslandscape.com



Legal Notice

540 Isenhour Hills Drive
Zionsville, IN 46077

A petition is being filed for a lot coverage variance for the above property. We will be requesting a coverage increase of approx. 4% to meet the needs of installing a stone paver pool surround as depicted in exhibit A & B. Please reference.

Lot Coverage Detail:

House Permit specified coverage – 4,365sqft
Lot Area – 24,304 sqft
Total coverage – 17.96%

Pool w/coping – 476 sqft
Total lot coverage w/Pool – 19.91%

Proposed Landscaping Stepping Stone Decking with Spacing – 962 sqft

- There will be crushed stone in between stepping stones to allow for a non-impervious surface. (allows for water drainage).
- **Total Lot Coverage with proposed Pool Surround – 23.87%**

This addition will be done in a manner so that surrounding properties will have added value with no negative impacts.

- This grant will have not be injurious to public health, safety, morals, and general welfare of the community because we are just adding Stepping Stones for a pool deck.
- The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because we are not building anything intrusive nor abnormal to what you would typically see with a pool.
- Strick application of the terms of the zoning ordinance will result in unnecessary hardships in the use of the property because there will not be any pool surround with the pool. Tables and chairs will have to reside in either grass or mulch. This would result in the constant need to drain and refill the pool for cleaning purposes which would thus waste water which is a negative for the environment.

**TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS
BOONE COUNTY, INDIANA**

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant (will / will not) be injurious to the public health, safety, morals, and general welfare of the community because:
we are just adding stepping stones (pavers) for a pool deck

2. The use or value of the area adjacent to the property included in the variance (will / will not) be affected in a substantially adverse manner because:
we are not building anything intrusive nor abnormal to what you would typically see with a pool.

3. Strict application of the terms of the zoning ordinance (will / will not) result in unnecessary hardships in the use of the property because:
*If there is no pool surround with the pool, table and chairs will have to reside in either grass or mulch. This would result in the constant need to drain and refill the pool for cleaning purposes which would thus waste water which is negative **DECISION** for the environment.*

It is therefore the decision of this body that this VARIANCE petition is APPROVED/DENIED.

Adopted this _____ day of _____, 201__.



Petition Number: 2016-26-DSV

Subject Site Address: 360 W Linden Street

Petitioner: Michael & Diana Powell

Representative: Todd Rottmann

Request: Petition for Development Standards variance in order to provide for the expansion of a garage to:

- 1) Exceed the required lot coverage of 35%, to 50.2%
- 2) Deviate from the required side yard setback
- 3) Deviate from the required aggregate side yard setback
- 4) Deviate from the required rear yard setback

in the R-V Residential Village Zoning District

Current Zoning: RV Urban Residential Village Zoning District

Current Land Use: Single-family residential

Approximate Acreage: 0.15 acres

Zoning History: 2001-13-DSV (Approved) 2013-06-DSV (Approved)

Exhibits: Exhibit 1 – Staff Report
Exhibit 2 – Aerial Location Map
Exhibit 3 – Site Plan
Exhibit 4 – Petitioners Cover Letter
Exhibit 5–Petitioners proposed Findings of Fact

Staff Reviewer: Wayne DeLong, AICP

PETITION HISTORY

This petition will receive a public hearing at the October 11, 2016, Board of Zoning Appeals meeting.

PROPERTY HISTORY

The property is comprised of Lot 19 of Cross' Addition as well as 5 feet of a vacated alley. In 2001 (2001-13-DSV), a variance was approved for an addition to the single-family home which would increase the lot coverage to 54%. In 2013 (2013-06-DSV), a variance was approved for an addition to the single family home which would increase the lot coverage to 42 percent (in a different configuration that approved in 2001), and to allow for zero foot side yard and an aggregate side yard setback of 10 feet). Neither project was ever constructed.

ANALYSIS

The 0.15-acre parcel is currently improved with a 1.5 story, single family dwelling with a base foot print of 2,728 square feet. As proposed the site would be improved with an addition to the existing garage located 13.2 feet from the rear yard lot line. Currently the home is situated 2.5 feet from the side yard lot line, 19.2 feet from the rear lot line, and occupies 41.33 percent of the lot.

-LOT COVERAGE

Per the RV Residential Village District regulations, lot coverage standards states the maximum lot coverage is 35 percent. As the property has already received a variance (in 2001) to improve the property with a lot coverage of 54 percent, the request serves as a reduction in the approved percentage and concentrates excess coverage in the form of a detached garage (a feature common to single-family dwellings in the village).

-SETBACK (SIDE YARD)

Per the RV Residential Village District regulations, the minimum side yard setback is 5 feet with a minimum aggregate side yard setback of 15 feet. The petitioner is requesting a 2.5 foot side yard setback with an aggregate setback of 13.7 feet. As the property has already received a variance (in 2013) which established that the property's existing improvements enjoyed reduced setbacks, Staff is in support of the existing established setbacks remaining on the property (in the form illustrated on the submitted site plan). In the event that a future project is contemplated for the property which intensifies the non-conformity of the existing setbacks, a variance would be required from the Board of Zoning Appeals for setbacks which are beyond those supported by the Zoning Ordinance.

-SETBACK (REAR YARD)

Per the RV Residential Village District regulations, the minimum rear yard setback associated with primary structures is 20 feet. The petitioner is requesting a 13.2 rear yard setback.

In reviewing the request for rear yard setback deviations, Staff reviews the existing built conditions of the surrounding area. In this particular case, both primary dwellings and accessory structures enjoy reduced setbacks when along the east-west alley which runs parallel to Linden Street and Ash Street. With these improvements in mind, Staff is supportive of the requested rear yard setback.

PROCEDURAL – VARIANCE TO DEVIATE FROM STANDARDS

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

- (a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*
- (b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*
- (c) The strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property:*

Proposed Findings of Fact are attached for the Board of Zoning Appeal’s consideration.

STAFF RECOMMENDATIONS

Staff recommends approval of the design standards variance included in Docket #2016-26-DSV, as filed.

RECOMMENDATION MOTION

I move that Docket #2016-26-DSV design standards variance to provide for the expansion of a garage to exceed the required lot coverage to 51%, to deviate from the required side yard setback, to deviate from the required aggregate side yard setback, and to deviate from the required rear yard setback (all as illustrated on the submitted site plan) in the R-V Residential Village Zoning District be (Approved as filed, based upon the findings of fact / Denied/ Continued) as presented.



Zionsville Corporate Li	
Feature Name:	
	Zionsville Rural Serv
	Zionsville Town Serv
Flood Hazard BC 2013	
FLD_ZONE:	
	AE
	X
BuildingPermits	
Status:	
	active
Sewer Pipes	
Force Main:	
	no
	Regional Counties
	Townships
	Parcels
	Boone Subdivisions
	ZFD Structures
	Sewer Manhole
	ZFD Fire Hydrants
	Boone County Address
	1980s Building Permits
	1990s Building Permits
	2001 Building Permits
	2002 Building Permits
	2003 Building Permits
	2004 Building Permits
	2007 Building Permits
	2008 Building Permits
	2009 Building Permits
	2010 Building Permits
	2011 Building Permits
	Permit
	Regional County
	Edge of Pavement
	Storm Pipes
	ZFD Structures
	ZFD Drives
	Roads
	Highways
	Urban District R

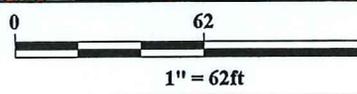
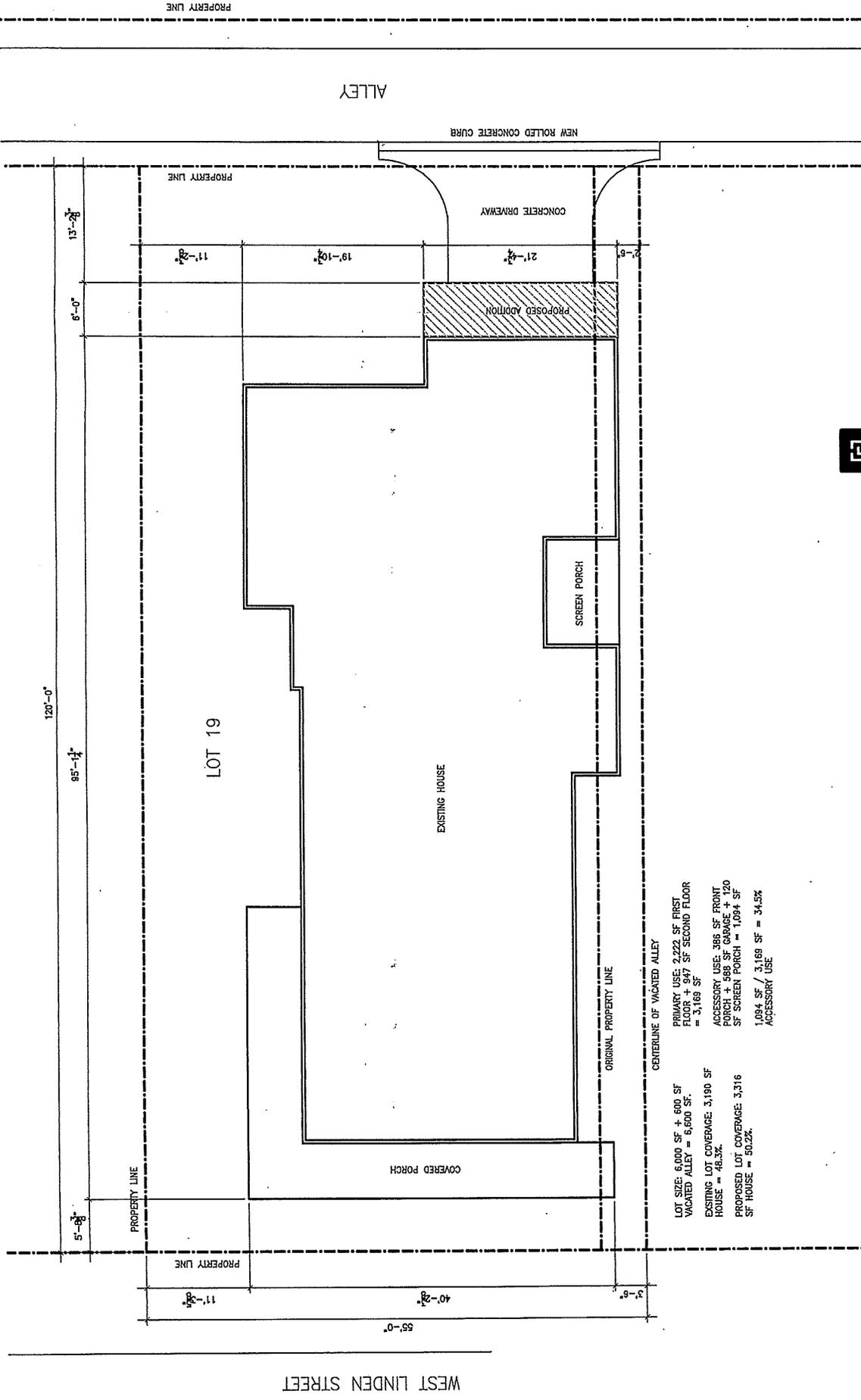


Exhibit 2



RTI
ROTTMANN | COLLIER
 ARCHITECTS

POWELL RESIDENCE PROPOSED SITE PLAN

21 SEPTEMBER 2016

LOT SIZE: 6,000 SF + 600 SF
 VACATED ALLEY = 5,600 SF
 = 3,169 SF
 EXISTING LOT COVERAGE: 3,190 SF
 HOUSE = 48.3%
 PROPOSED LOT COVERAGE: 3,316 SF
 SF HOUSE = 50.2%
 ACCESSORY USE = 34.5%
 1,094 SF / 3,169 SF = 34.5%
 ACCESSORY USE

WEST LINDEN STREET

September 22, 2016

RE: Michael and Diana Powell, 360 West Linden Street
Petition for Variance of Development Standards #2016-26-DSV

We are submitting for zoning variances and wanted to share some more information about the petition so you would have a better understanding of what is being proposed.

All we are wanting to do is add 6' feet onto the back of our existing garage so that we can park two cars in it. The current garage has a stair leading to the house that is roughly 5' deep along the back wall for almost 2/3 of that wall distance. That leaves only 15' depth for one bay and makes us park our car at an angle in the other bay, with minimal space around the car to reach the stair.

All four variances we are asking for are standards that are already not being met by the current home, so we are not asking for any variances from something currently in compliance. In fact, the side yards are not changing at all, we are merely listing them because they are present and will continue to be present with the new work. Specifically, they are to reduce side yard setback to 2.5' instead of 5' and reduce aggregate side yards to 13.7' instead of 15'. The two variances which are also in non-compliance but we are affecting the totals are to change the rear yard setback to 13.2' instead of the 19.2' it is now and increase the lot coverage from 48.3% to 50.2% (even though we are reducing impermeable area by removing the parking pad along the alley).

Because we are having to vary from the standards, we have spoken with the neighbors around us and they have indicated their support for these variances. In fact, the people whose garage is directly across the alley from our garage would like for us not to have to park on our driveway or along the alley as they have to be cautious of our vehicles when backing out of their drive. We also have a drainage issue that needs to be corrected. During heavy rains water gets into the garage. This project would allow us the opportunity to better address the water and drainage issue as part of our scope of work.

This garage addition is only occurring on the alley side of the house so it will not have any impact on the appearance along Linden Street. The setbacks we are seeking are all similar to or better than those of the nearby properties so we feel comfortable with asking for those (see included exhibit). While the lot coverage is greater than most typical variances, you must consider that this historically small lot is 1,466 square feet smaller than what is required in current zoning and if it were large enough to meet current zoning then the percentage of lot coverage for the house would be 35%, plus 6% for porches.

Most important to us, however, is the hardship our current situation imposes and would continue to impose should this variance get denied. At our ages, 77 and 67, it becomes hazardous to deal with weather elements when parking outside. More significantly, Michael (better known as Mickey) has Parkinson's Disease which makes dealing with the curbs, slopes, uneven pavement, and weather even more perilous. In addition, it is not easy to get around in the current garage if there is a car in there because it is so tight that you can barely open the driver's side door and it is also difficult to reach and manipulate the stairs. As you likely know, Parkinson's Disease does not get better over time. The room we are

TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS

BOONE COUNTY, INDIANA

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because this project maintains similar setbacks of properties in the area, will be compatible in design style with existing home and surrounding properties, will increase the value of this property by having a usable garage for two cars, will eliminate the owner having to park a second car along the alley, the work is occurring along alley side of Lot only, there is ample landscaping around the work area, and the property adjacent to this work is a double lot with the home being located on the opposite side of the property.
2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because this project maintains a similar rear setback of properties in the area, does not reduce the side yard setbacks from what they are currently, all four variance requests are already present on the property with the existing conditions, will be compatible in design style with existing house and surrounding properties, will increase the value of this property, will eliminate the current eyesore of owner needing to park a second car along alley by providing two enclosed off-street parking spaces for the homeowners, makes it easier for neighbor across alley to get out of their driveway by not having a car parked along alley, all work is occurring along alley side of Lot only, there is ample landscaping around work area, and scope of work will address water drainage issues with the current garage and along the alley.
3. Strict application of the terms of the zoning ordinance will result in unnecessary hardships in the use of the property because this lot is an historic small lot (only 5,934 square feet plus vacated alley) so the allowable amount of coverage is less than what is allowed on the required 8,000 square foot lot in current zoning, this project maintains similar side and rear setback of properties in the area, does not reduce the side yard setbacks from what they are currently, all four variance requests are already present on the property with the existing conditions as they are now, the garage floods during heavy rains, two cars will not fit in the garage, clearances around one car in the garage do not allow for ease of maneuvering, and homeowners are of retirement age and one has Parkinson's Disease so parking on the street or along the alley is hazardous especially in inclement weather and during the winter.

DECISION

It is therefore the decision of this body that this Variance petition is **APPROVED**.

Adopted this _____ day of _____, 20____.



Petition Number: 2016-27-DSV

Subject Site Address: 190 W Walnut Street

Petitioner: John (Jack) & Leisel Urbanski

Representative: Lee Constantine

Request: Petition for Development Standards variance in order to provide for the installation of a two-car garage to:
1) Exceed the required lot coverage of 35%, to 46.2%
2) Deviate from the required front yard setback
3) Deviate from the required side yard setback
in the R-V Residential Village Zoning District

Current Zoning: R-V Residential Village Zoning District

Current Land Use: Single-family residential

Approximate Acreage: 0.14 acres

Zoning History: None

Exhibits: Exhibit 1 – Staff Report
Exhibit 2 – Aerial Location Map
Exhibit 3 – Site Plan
Exhibit 4 – Petitioners Cover Letter
Exhibit 5–Petitioners proposed Findings of Fact

Staff Reviewer: Wayne DeLong, AICP

PETITION HISTORY

This petition will receive a public hearing at the October 11, 2016, Board of Zoning Appeals meeting.

PROPERTY HISTORY

The property is comprised of approximately 0.14 acres of Lot 46 in Cross' Fourth Addition to the Town of Zionsville. Staff is not aware of any prior variance requests for this property.

ANALYSIS

The 0.14-acre parcel is currently improved with a single-family dwelling and accessory structures totaling 2,390 square feet. As proposed, the Petitioner is seeking approval to improve the parcel with 428 square feet of additional accessory uses (inclusive of the replacement of the 352 square foot detached garage with a 624 square foot detached garage). While the request seeks to exceed the 35 percent maximum by 11.2 percent, it is noted that the lot currently enjoys 39 percent lot coverage.

LOT COVERAGE

Per the RV Residential Village District regulations, lot coverage standards states the maximum lot coverage is 35 percent. The overall area developed prior to the adoption of the current Ordinance standards, and review of parcels and improvements in the area did reveal that some parcels in the area enjoy deviations from current coverage standards. Further, many properties in the area enjoy the use of a detached garage. Both of these characteristics currently exist on the subject site.

In summary, Staff supports requests which provide for deviations from the lot coverage requirements when the request, generally speaking, follows this general reasoning: 1) the request is seeking to improve the site with an accessory use commonly enjoyed by other properties in the area (in this case, a detached structure), and 2) other properties within proximity to the parcel enjoy deviations from the maximum lot coverage requirements (to the east and north). Specific to the northern land use, it has additional unique characteristic which in the opinion of staff cannot be overlooked: the site adjoins an established two-story multi-family development. The multi-family development, in particular, enjoys a lot coverage which far exceeds the standards of the Ordinance (at approximately 60 percent). Given the subject site's proximity to a multi-family development and the associated lot coverage, and the previously mentioned additional characteristics, Staff is in support of the Petitioner's request.

SETBACKS

Per the RV Residential Village District regulations, any improvements to the site are required to conform to minimum setback standards (side yard minimum: 5 feet, front yard minimum, 20 feet). As the site currently enjoys a 2-foot front yard setback, Staff is in support of the continued utilization of the 2-foot front yard setback as illustrated on the Petitioner's site plan attached to this staff report. As to the proposed side yard setback, given that it is associated with the property line common with the established multi-family development and, in the

opinion of Staff, ample area will be provided for both surface drainage and property maintenance, Staff is in support of the requested setbacks.

PROCEDURAL – VARIANCE TO DEVIATE FROM STANDARDS

The Board of Zoning Appeals shall hear, and approve or deny, all variances from development standards of the Zionsville Zoning Ordinance. A variance from development standards may be approved only upon written determination that:

- (a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*
- (b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*
- (c) the strict application of the terms of the zoning ordinance will result in an unnecessary hardship in the use of the property:*

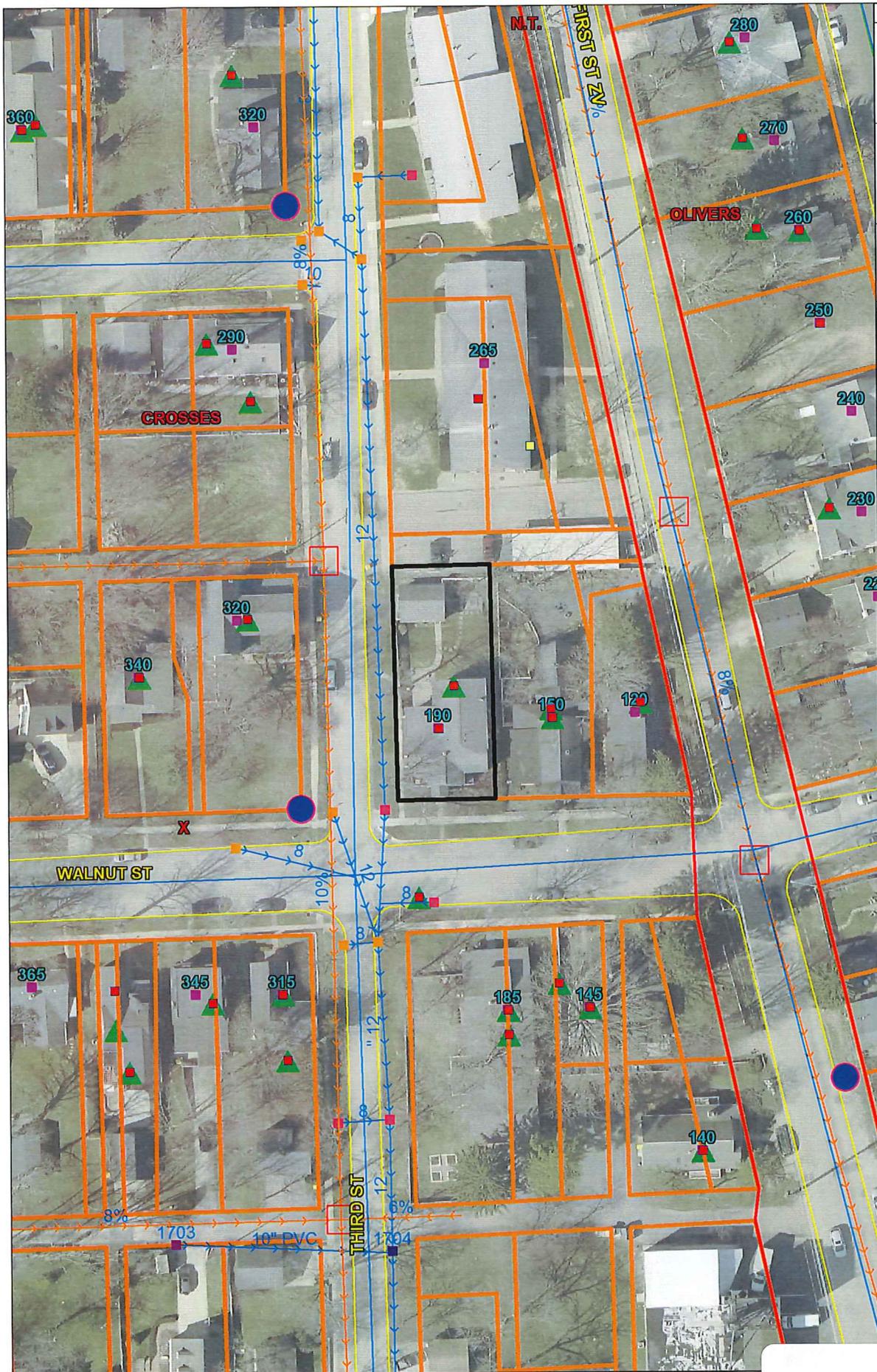
Proposed Findings of Fact are attached for the Board of Zoning Appeal’s consideration.

STAFF RECOMMENDATIONS

Staff recommends approval of the design standards variance included in Docket #2016-27-DSV, as filed.

RECOMMENDATION MOTION

I move that Docket #2016-27-DSV design standards variance to provide for the installation of a two-car garage to exceed the required lot coverage to 46.2%, to deviate from the required front yard setback and to deviate from the required side yard setback (all as illustrated on the site plan attached to this report), in the R-V Residential Village Zoning District for the property located at 190 W Walnut Street be (Approved as filed, based upon the findings of fact / Denied/ Continued) as presented.



Zionsville Corporate Li Feature Name: Zionsville Rural Serv Zionsville Town Serv	
Flood Hazard BC 2013 FLD_ZONE: AE X	
BuildingPermits Status: active	
Sewer Pipes Force Main: no	
Regional Counties Townships Parcels Boone Subdivisions ZFD Structures	Sewer Manhole ZFD Fire Hydrants Boone County Address 1970s Building Perm 1980s Building Perm 1990s Building Perm 2001 Building Perm 2002 Building Perm 2005 Building Perm 2007 Building Perm 2008 Building Perm 2009 Building Perm 2010 Building Perm 2011 Building Perm Permit
Regional Count Edge of Paveme Storm Pipes ZFD Structures ZFD Drives Roads Highways Urban District R	

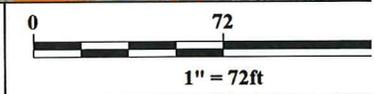
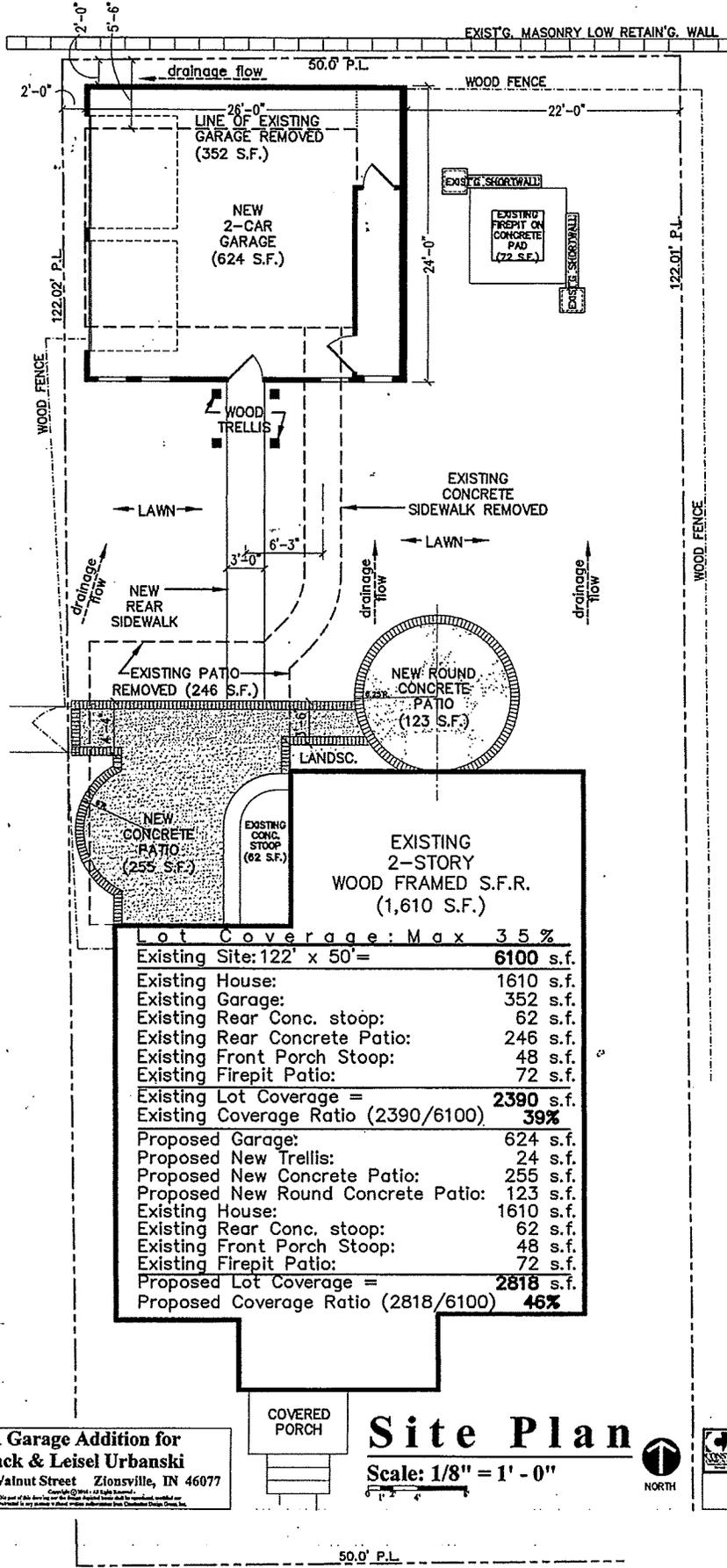


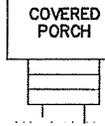
Exhibit 2



Lot Coverage: Max 35%

Existing Site: 122' x 50' =	6100 s.f.
Existing House:	1610 s.f.
Existing Garage:	352 s.f.
Existing Rear Conc. stoop:	62 s.f.
Existing Rear Concrete Patio:	246 s.f.
Existing Front Porch Stoop:	48 s.f.
Existing Firepit Patio:	72 s.f.
Existing Lot Coverage =	2390 s.f.
Existing Coverage Ratio (2390/6100)	39%
Proposed Garage:	624 s.f.
Proposed New Trellis:	24 s.f.
Proposed New Concrete Patio:	255 s.f.
Proposed New Round Concrete Patio:	123 s.f.
Existing House:	1610 s.f.
Existing Rear Conc. stoop:	62 s.f.
Existing Front Porch Stoop:	48 s.f.
Existing Firepit Patio:	72 s.f.
Proposed Lot Coverage =	2818 s.f.
Proposed Coverage Ratio (2818/6100)	46%

**A Garage Addition for
Jack & Leisel Urbanski**
190 W. Walnut Street Zionsville, IN 46077



Site Plan
Scale: 1/8" = 1' - 0"
NORTH

CS 153 S. Patrick Street
Zionsville, IN 46088
317-736-4049

7 September, 2016
Pld.: 2016-16

Detailed Description of Request
Petition #:2016-27-DSV

We are submitting for a zoning variance and wanted to share more information about the request so there might be a better understanding of what is being proposed.

Petition for Variance of Development Standards

- Lot Coverage Variance
- Minimum Setback Variance (side & front yard)

Description: We are seeking to replace our detached garage that recently sustained storm damage. The improvement we would like to make allows us to replace the dilapidated unit that has asbestos siding, leaking roof, a crack in the foundation and mold requiring remediation. Our intention is to address all of these issues by replacing the unit with a new two-car garage that would bring it in line with current environmental standards of materials and be compatible in design style with our surrounding properties. This would also provide off-street, covered parking for our growing family. The aforementioned issues have proved to be increasingly a challenge through the five years that we have lived in our home. Addressing them will establish the prospects for us to be able to have our children grow up in this house, safely enjoying outdoor activities such as biking and gardening, and supplies for which the garage will provide storage. Furthermore, multiple (3) recent appraisals indicate that such work would increase property value.

The lot coverage variance we are pursuing is an increase from 35% to 46.2%. The approval of such coverage variances would be consistent with neighboring properties (see 260 North Third Street, directly across from the proposed garage). Actual building coverage represents 6.8% of the incremental increase, while hardscaping make up the remaining 4.4%. In an effort to protect as much greenspace on our property, our plan is to modify the current hardscaping footprint to visually offset the larger garage size and maximize lawn and garden growth (see exhibit photos).

The minimum setback variance we are pursuing is a front setback on the west border and the side setback on the north border of our property. We are hoping to preserve the exact location of the current garage's western face. While this location is visually intact with other houses lining 3rd Street, we recognize this would technically require a front setback variance based on the standards that were put in place after the garage was originally built.

With regard to the side setback to the north, our hope is to pursue a 2' setback. This would give us the opportunity to utilize a 5.5' wide abandoned passageway (see exhibit photos) between our existing garage and the apartment complex parking area that is currently an unusable eyesore for the Village. Gavin Merriman, from the Town of Zionsville Stormwater Department has consulted on the project and confirmed the plans would meet drainage standards.

Thank you for your consideration,

Jack & Leisel Urbanski

#2016-27-DSV

TOWN OF ZIONSVILLE BOARD OF ZONING APPEALS BOONE COUNTY, INDIANA
PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS
FINDINGS OF FACT

1. The grant **will not** be injurious to the public health, safety, morals, and general welfare of the community because:
 - It will remove 2 harmful entities: asbestos and mold adhering to safe, compliant practices
 - It will address storm damage to garage as assessed and required by insurance company
 - It will be consistent with adjacent property coverage ratios
 - It would make attractive use of a currently unsightly, unusable strip of the property and remove a dilapidating structure
 - It will bring the property garage structure up to code with safe materials
 - Property owners will continue to maintain the green space and protect the lawn and gardens they have invested in creating and growing

2. The user or value of the area adjacent to the property included in the variance **will not** be affected in a substantially adverse manner because:
 - According to recent appraisals, it will increase the value of the property under consideration bringing it in line with relevant comps, presumably contributing to elevate neighboring property values positively
 - Proposed plans will not negatively encroach on the current use, view, health or aesthetics of neighboring properties or the village at large

3. Strict application of the terms of the zoning ordinances **will** result in unnecessary hardships in the use of the property because:
 - Not maintaining the current west border of the garage would push the new structure east, encroaching on the lawn and garden beds that property owners have worked hard to build and maintain. In short, it would lead to less green space.
 - Not tearing down the current garage forces owners to deal with water inside the garage every time it rains, in addition to exposing young children to potentially toxic mold and asbestos of patch repairs.
 - The current garage does not safely provide space for bikes, wagons and other supplies for children to enjoy the outdoors, in addition to providing shelter for a car and gardening tools. The new plan provides owners the opportunity to grow our young family into this space. We love our home, yard and village and want to make it work for us and the community!

Decision

It is therefore the decision of this body that this variance is APPROVED/DENIED

Adopted this _____ day of _____, 201__.

**Town of Zionsville
Board of Zoning Appeals
October 11, 2016**

Pledge of Allegiance was said, and attendance was taken by the Secretary.
Present: Greg Morical, Chairman, Larry Jones, Al Wopshall, John Wolff, Julia Evinger.

Staff attending: Carol Sparks Drake, attorney; Wayne DeLong.
A quorum is present.

Morical Good evening, and welcome to the October 11, 2016, meeting of the Zionsville Board of Zoning Appeals. The first item on our Agenda is the Pledge of Allegiance.

All Pledge.

Morical The next item on our Agenda is attendance.

DeLong Mr. Morical?

Morical Present.

DeLong Mr. Wopshall?

Wopshall Present.

DeLong Mr. Jones?

Jones Present.

DeLong Mr. Wolff?

Wolff Present.

DeLong Ms. Evinger?

Evinger Present.

Morical The next item on our Agenda is the review and approval of the August 9, 2016, meeting minutes. Are there any comments on the minutes? Hearing none, I would entertain a motion.

Evinger I make a motion to approve the minutes as presented.

Morical Thank you. Is there a second?

Wopshall I second.

Morical All those in favor, please say aye.

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- All Aye.
- Morical Any opposed? Motion carries. The next item on the Agenda is the review and approval of the September 13, 2016, meeting minutes. Are there any comments on the minutes? Hearing none, I would entertain a motion and note that I am not going to vote since I did not participate in that meeting. Is there a motion?
- Evinger I'll make the motion to approve the minutes as presented.
- Morical Thank you. Is there a second?
- Jones Second.
- Morical All those in favor, please say aye.
- All Aye.
- Morical I abstain. Motion carries. The next item on the Agenda is continuance requests, and there are none at this time. And the next item is continued business. Before we move through any of those, we have received a request from Mr. Urbanski that in light of his schedule and the age of his children he asked that we move up the petition with respect to Docket #2016-27-DSV related to 190 West Walnut Street to the beginning of our Agenda and so I would posit that to the Board to see if people are amenable to that. Is there any discussion? Hearing none, could I get a motion?
- Wolff I will make a motion that we move Docket 2016-27-DSV to the beginning of our Agenda.
- Morical Thank you. Is there a second?
- Evinger Second.
- Morical Great. Mr. Urbanski are you here tonight? You're up.
- Urbanski Good evening. I don't know if this is on, but can you hear me okay?
- Morical We can, thank you.
- Urbanski So am I just going to give a brief overview or –
- Morical Please state your name and address for the record and provide a brief overview of what you're asking for tonight.

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- Urbanski Sure, okay. I'm Leisee Urbanski at 190 West Walnut Street at the corner of Third and Walnut Street, and what we are looking to do is tear down our current detached garage that's at the northwest corner of our property at this time. It's been storm damaged. It's got asbestos, and it rains inside the garage as well as outside whenever there are storms, so what we'd like to do is tear that down. We do have an insurance claim on that, so we have a time frame to, you know, make good on that and build a new structure, which is a two-door garage improvement to the current one and basically place it exactly where the current one is today.
- Morical Thank you. Are there any questions for the petitioner? Hearing none, are there any remonstrators here tonight? Seeing none is there anyone who wants to speak in favor of the petition? Seeing none, may we have the Staff Report, please?
- DeLong Thank you. Staff is supportive of the petition as filed. We note the lot coverage, as requested, certainly noting the existing detached garage that's planned to be demolished. The proposed garage is larger, for a total lot coverage to be established at 46.2 percent. Staff acknowledges lots, some lots in the area do enjoy deviation from the current standard and certainly the property to the north, which is the established multi-family development, also enjoys a lot coverage that is near 60 percent. Again, Staff is recommending approval of the petition based upon the submitted information including the site plan and concept elevations, and I would be happy to answer any questions.
- Morical Thank you, Wayne. Any questions for Staff?
- Evinger Just a quick question since you talked about some of the hazardous conditions that might be on the property. As far as the contractor that you've engaged, they'll handle everything appropriately, obviously?
- Urbanski Oh yes for like abatement and removal?
- Evinger Uh huh.
- Urbanski That's correct, yes.
- Evinger Okay, thank you.
- Morical Any further questions for the petitioner or Staff? Hearing none, I would entertain a motion.
- Evinger I'll move that Docket 2016-27-DSV, design standards variance, to provide for the installation of a two-car garage to exceed the required lot coverage to 46.2 percent, to deviate from the required front yard setback and to deviate from the required side yard setback, all as illustrated in the site plan attached to staff's report, in the RV, Residential Village Zoning District for the property located at 190 West Walnut Street be approved as filed.
- Morical Thank you. Is there a second?

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- Jones Second.
- Morical All those in favor, please say aye.
- All Aye.
- Morical Any opposed? Motion carries. Thank you, Ms. Urbanski.
- Urbanski Thank you very much.
- Morical So the next item on our Agenda is 2016-16-UV, which I understand has been continued to the November 9 meeting at the request of the petitioner, so that moves us to Docket #2016-18-DSV, M. Lyons as it relates to 8541 East 500 South. Mr. Lyons, will you please approach and state your name and address for the record, and give us an overview of what you are asking for tonight.
- Lyons Hi guys. Michael Lyons, 8541 East 500 South. I've got a petition for a variance of development standards for my tornado shelter. I wasn't sure, to make sure everybody's on the same page. I had applied, let me go through all of this. I had applied, and we were issued permits and upon a re-review of those permits I believe it states that a flat roof steel structure was not customary in a residential neighborhood and that was not what we were going to do with it. We did have it sitting on the 11 acres that I own, but this is an 8 foot by 20 foot steel container. It is now covered by dirt, earth, grass, everything but the doors as we were able to use it a couple of times this year with the storms that struck about a half a mile from the house, but it, I think there may have been, and it was probably my fault when I filed for the permits, I had not done that before, so I wasn't really sure really what I was doing, but the structure as I filed for permit, I guess I can see kind of what happened, but we're not using it as a steel container sitting out in the open. I believe in your packet you've probably got photos.
- Morical We did, yes.
- Lyons I think there were just a couple of concerns by the Staff, so maybe you can direct me as far as what I need to answer. That might help you understand what I was looking for.
- Morical No, I appreciate that. So you, essentially, laid the container at grade and then put a mound over the top of it, except for the front doors, and it appears that it is grass or you've put grass seed on the top?
- Lyons Yeah, yes.
- Morical Okay.
- Lyons Yes it's –
- Morical But otherwise the container was laid at grade, essentially on the ground?

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- Lyons It was not, it's not on the ground. It was actually set on, they are steel plates and they are staked in the ground and then the container was set on top of that.
- Morical Did you dig out any, did you move it below grade at all or is it essentially –
- Lyons No, all that was done it was leveled.
- Morical Leveled, okay.
- Lyons That area was leveled.
- Morical And you use this for a tornado shelter?
- Lyons Exactly.
- Morical Do you have a basement in your house?
- Lyons We do have a basement. I have a couple of family members that were very afraid of being covered in that basement if something like that was to happen, so I needed to do something a little different.
- Morical Okay. Thank you. Any other questions for the petitioner?
- Evinger I don't know. I guess I have a question, just out of curiosity, and this is probably more for Staff than the petitioner, but is there a useful life for a container?
- DeLong I would suggest Mr. Lyons would be better to answer the question as to the longevity of the structure.
- Lyons The shipping containers, as you well know, they are used in transport across the ocean, so they are built out of a corrugated steel. It's a noncorrosive steel and they are painted with, it's a ceramic insulation paint. It's all ISO certified. It keeps them from corroding. Now this container is wrapped in a tarp to keep the dirt from laying right up against it and to help with any moisture issues, so it was wrapped before it was covered.
- Evinger And what was it wrapped with just out of curiosity?
- Lyons It's a fabric tarp. Basically it's a steel tarp is what it is.
- Evinger Okay.
- Wolff How does the door mechanism work? Did you change the door mechanism from a storage container or is it –

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- Lyons The door mechanism is a, it's a standard lock rod like you would normally see. What I have done is in the locked position okay, so as you're entering the container, in the locked position it leaves a 2-1/2" opening in the door. Basically what I've done is there are internal tie-downs in that container. I put a cable on the inside, so on the two occasions that my family was in it that cable goes to a latch on the door, so it will hold the door tight, but it won't let it close all the way, so the lock rod is in the locked position, so like I say it won't lock, but you've got 2-1/2, it's actually 2-3/4", open, so you get some exchange of air.
- Wolff Is there any other air handling, just that?
- Lyons No, just, yeah just that. And it's not meant to live in, but you know you're going to be able to get air in and out.
- Evinger Do you have anything furnished within the shelter at all? Are there chairs, beds, anything?
- Lyons The only thing that's in there right now, quite frankly because of this, is there are cabinets up on the wall to hold, you know, just candles and things like that.
- Jones But the original hardware is still on the outside that you can lock things in it?
- Lyons Yes.
- Morical Do you use it for any purpose other than a tornado shelter?
- Lyons Yeah, right now I've got three of the kid's four-wheelers in the very back of it.
- Morical So as additional storage?
- Lyons Yeah, they were in the way and so we stuck them in the back and it's, like I say, it's 8 foot by 20 feet, so it's not a big area.
- Wopshall So you're telling us half of it is now being used as a storage building?
- Lyons About one third of it, yeah.
- Wopshall So is it a tornado shelter or a storage building?
- Lyons It's a tornado shelter.
- Wopshall Being used as a storage unit.
- Lyons You asked, so I told you. I moved them out of my way and stuck them in so they wouldn't get wet.
- Morical And you don't use it for any other purpose other than as a tornado shelter and for storage?

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Lyons No.

Morical The door faces which direction?

Lyons The door faces west.

Morical Faces west?

Lyons Yes.

Morical And does that face any of the neighboring properties?

Lyons Yeah, it faces a field. Oh wait, it's on the, I'm sorry it's on the east side of my property, and I've got just about 11 acres there, and it's on the east side facing west, so you've got to go all the way across my property and then into the neighbors. They have a horse that they keep out there, but that's the only thing that you can see. I do think in one of your, some of those photos you might be able to get a little better sense of what you can –

Morical It's marked on the plat, so it's in the southeast corner of your property and the door faces west.

Lyons It does.

Jones Are the doors secured? I mean locked, I guess, would be the best way to put it?

Lyons Yes.

Jones In case of a tornado you need not only to get out, but find the keys?

Lyons It's not a key it's a three-digit lock, so it doesn't take long to get it open. We are in hopes that we have more, a little more notice than that, but sometimes you don't.

Evinger Is there, have you, I know because you've got kids you're probably just as concerned that there's, is there any chance that they could be locked in?

Lyons No and one of the things that Staff had mentioned is that you can't get in it and lock the door. There's just no way. The lock rods are on the outside and you can't do it. No, the worst thing is they might leave the door open, and I've had to go out and close it a time or two, but that was probably me.

Morical Thank you. Any further questions for Mr. Lyons? Hearing none, is there anybody who wants to speak in favor of the petition here tonight? Seeing none, are there any remonstrators? Thank you, Mr. Lyons. We will call you back up if we have any further questions.

Lyons Thank you.

Morical Thanks. Please state your name and address for the record.

Schiferl Yes. Good evening, my name is Kevin Schiferl. I live at 8552 County Road 550 South in Zionsville where I've lived since 1988. My wife and daughter are here today as well. Some of the people have heard this. I know you weren't here last time, and I have additional information from the last meeting, and I think this is really important. I appreciated some of your questions, and I was intrigued by some of the answers in light of what I'm about to tell you. This all began, well let me sort of start with this. You know when you pull into Zionsville on our signs it says Zionsville, for all the right reasons. Well that's an important thing in Zionsville to me, and I moved here in '88 and have lived here continuously since, bought the current property we're at in '94 that adjoins the Lyons, and the right reasons mean to do the right thing and in this regard let's put this in context. I heard a notion that there were permits applied for. Well, there were no permits applied for because certain people believe in the shoot first, ask questions later theory of life. My wife and I have a large investment in our home. When we wanted to build a barn for our horses we came before you, asked permission to do it, had lots of questions. As a matter of fact we had to go back twice with plans for our barn, which by the way cost \$110,000. We were put through the mill on it. It peaked my interest and because of that I've served on the Boone County Plan Commission, Boone County Zoning Appeals, and I presently serve on the Zionsville Plan Commission. I have this, as my wife will tell you, right alongside of my cabinet at home in our desk. We had no idea that anything was going on behind us until one day, and I can tell you what day it was, it was the first day of NFL football last year, when 135 feet from my home where I have my children, my dogs, my horses, our cats, I heard gunshots.

Now, that's a separate issue, but it alerted me to the fact that behind me some new people had moved in after 18 years of our bucolic existence on our property. People who didn't seek permits, didn't come and ask for permission as our community insists upon, but went ahead and did some things. And those things they did was they put two cargo containers, I want to pause right there, I got to stay by the microphone. I'm used to walking around. Cargo containers are not allowed as accessory structures in any community in Central Indiana. Let me say that again. Not allowed. Not in Zionsville or not in Noblesville, Carmel, Avon. In fact, Boone County Plan does not allow people to use cargo containers as accessory structures, so this was brought to the attention of the Staff. Staff did their job, and I applaud them for doing this job and I have, and I ask that it all be made available to you, a history of what happened here, and I'm just going to read from some of this. If anyone has any questions I have copies I'll be happy to provide to anybody. But after Staff was alerted there was a noncompliance, Mr. Lyons applied late, late for a permit and one thing that happened is when he applied for the permit he was only charged by Staff \$75. Now our statutes and our rules and ordinances say that if you do something and don't ask for permission and then later have to come in and apply for a permit that you actually pay five times the amount of the permit. That was never done. So that's an important thing as well here because we are here on a variance request, and there's lots of reasons I think it should be denied, but among them is no filing fee was appropriately ever paid, but the \$75 which was paid was reimbursed when

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rightfully so Mr. DeLong and Staff looked into this issue. The original Staff that looked into this issue was named Jason Faucett, and I have emails from Jason Faucett going back to November, October, and November, and I took and provided to Jason and he took some of his own photos, and I think the Staff was asked to provide you copies of those photos. Chrissy emailed me today about them, yes.

Morical And we have them, yes, thank you.

Schiferl Those are the ones that I took from my property as well. I don't know that you have them because it was maybe late in the day, but there were 11 photos that Jason Faucett took. Jason couldn't get onto this property to look at them, but what's important, what you see in those photos, is you see some shooting range paraphernalia out there having nothing to do with anything about a storm shelter whatsoever. But that's what we witnessed, my family and my friends and visitors, this –

Morical Mr. Schiferl is that the, looks like a traffic –

Schiferl Yeah, they're targets is what they are.

Morical Okay, I saw a saw horse, but with red and white –

Schiferl Yes.

Morical Okay.

Schiferl So beginning back in October and November this was asked to be looked into and it was and Mr. Lyons did come and apply for permits for accessory structures. And what's important is a man's word is their bond I'd like to think. Mr. Lyons when he applied for two accessory structures represented they were going to be used for, drumroll please, storage. That's what he wrote to this Town and these are available in the Town's records. After that point in time this issue was raised about cargo containers. And Wayne, doing his due diligence, and I have emails with Wayne, that December 6 email, the November 25, and Wayne would tell you it took some time to look into this. He actually asked counsel, that is Carol, to look into this issue of whether or not cargo containers were appropriate accessory structures. And it was determined back then in December that they were not. Frankly, it took longer than I would've liked it to have taken. My research in my own firm revealed that to me, but again not an issue because the right things was done. And following that time in December 2015 Mr. Lyons was written a letter by Mr. DeLong advising him that these late accessory structure storage petitions that he had applied for were issued in error because that was the now departed Jason Faucett's decision to do that. So he was refunded his money. This says if you have anything to discuss about this, please call us. That again is December 18, 2015. After this time these two structures continued to exist, and I can't even believe I just did that. They're not structures, the cargo containers existed. One above ground. One with earth put around it.

There was a continued course throughout the time of the months of December, January, and February where attempts were made by Staff to get ahold of Mr. Lyons. Not one of them was successful. Finally on March 2, 2016, Owen Young, the new compliance inspector, wrote and asked about what was going to happen here because this was a nonconforming use and not appropriate use of structures. He had a conversation in February with Mr. Lyons and it said I understand efforts will be taken to gain compliance, and after that point in time there was compliance with the above-ground cargo container being removed. After this point in time we continued to have the one that was, again, not permitted ever, not originally or afterwards, with earth put around it, continues to exist. And that's what we're here on today. So when did the notion of storm shelter come about? It wasn't in the original petition. It wasn't in the conversation. It wasn't in the emails that were exchanged until May of 2016 when remarkably what had been represented to be a storage shelter or storage facility now was going to be a storm shelter. Still more time went by and communication between Janice Stevanovic and Staff with Mr. Lyons to attempt to gain access. As I stand before you, I don't even know if this has ever been inspected inside by anyone with Staff and I'll get to some of the regulations about storm shelters in just a minute. And we then had finally, because it was a nonconforming use, we're saying is anything going to happen with this. What's going to happen? And so Staff insisted that Mr. Lyons proceed with his petition that he had come and filled out, but had never served and given notice to any of the neighbors, including us. And so then it was on your Agenda in September, as you know, and then finally after that, the letter was told to be reissued to him about his violation, and we find ourselves here today. Now let me address the notion now of this storm shelter, which is quite a change from anything that I or my family have purposely witnessed this device being used for at any point in time.

Morical Can I pause you for a moment, Mr. Schiferl?

Schiferl Yes.

Morical Let me ask you a couple of questions. First of all, you mentioned that the zoning code, and you reference several municipalities potentially, specifically prohibits cargo containers –

Schiferl Yes, and I would –

Morical As an accessory use or doesn't allow, does it specifically prohibit them?

Schiferl It does not allow them. Boone County doesn't allow them. I'll let counsel answer that, as well, because she looked into this for Wayne. There's not one of our surrounding communities in Central Indiana that –

Morical But in terms of the Zionsville Zoning Ordinance, does the zoning ordinance specifically prohibit a cargo container as an accessory use?

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- Schiferl It does and that was Wayne's, I mean that's been not appealed. This is a nonconforming use, but that was Wayne's advice.
- Morical But it's, so Wayne, does our zoning ordinance, or Carol, specifically provide that using a cargo container as an accessory use is prohibited?
- Drake Zionsville's Zoning Ordinance says that an accessory structure is a subordinate structure that is customarily associated with the use, and the interpretation has been rendered in the correspondence from Wayne that the cargo containers, as they existed in December, were not customarily associated with.
- Morical So let me ask this question a different way. Remember, when we had the electronic billboard?
- Drake Yes.
- Morical And the request for the variance for the electronic billboard, and our zoning ordinance specifically says no electronic billboards, and the question was whether or not we should grant a variance to the ordinance that says no electronic billboards. Is there something in our zoning ordinance that says no cargo containers?
- Drake No sir.
- Morical Are we wrong about that, Mr. Schiferl?
- Schiferl No, you're absolutely right, but nor is there in Noblesville or Avon, but the approach is exactly consistent. The definition, it's in Article 11 of the definition sections, counsel just read portions of it, is that a subordinate structure shall be that customarily associated with the use of the primary structure or building, so what you then do, and I know, counsel, you're a learned guy. You look at what the primary use is. It's residential, so the question is do we in Zionsville allow cargo containers to be accessory structures to residents. Are they normal –
- Morical And that's why we're here tonight, right? He's saying please grant me an exception. I just wanted to know whether or not our Town Council had considered whether a cargo container could be an appropriate accessory use or not. If they had rendered a judgment like they had with respect to electronic billboards that would certainly be relevant.
- Schiferl I appreciate the question, but I think the answer's pretty clear and that's, to be clear, I mean, that's what Wayne's letter back in March said is this is a nonconforming use under this statute based on his interpretation, and so, we're here today because of that, but –
- Morical Right, and as you know from your different levels of service, he is seeking a variance, and the petitioner has the burden of proving in this case three different elements.

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Schiferl Sure.

Morical Could we focus your comments on whether you believe he's failed to meet his burden as it relates to one or more of them?

Schiferl Yeah absolutely, but I do think it's important, and I want to repeat this, no community allows cargo containers. I mean that is a fact. Carol called, I called around that is true, but I'll move on. Let's talk about what a storm shelter is and what a storm shelter is not then.

Morical Is that relevant to these three factors?

Schiferl Yes.

Morical And I'm pressing you not to annoy you, but because we've got a number of other things on the Agenda tonight and literally these are the questions we have to ask and answer.

Schiferl Absolutely, but let's talk about the issue then of this being a "storm shelter." I think it's important to note that this storm shelter, alleged storm shelter, is about 135 feet from my back patio. It's about a third of a football field, and it is about two football fields from Mr. Lyons' home. Now why is that important? Because believe it or not there are actual standards out there about what is or is not a storm shelter. FEMA 361, that's the Federal Emergency Management Association, sets forth guidelines on what is and is not a storm shelter. In the actual write-up on it, it says cargo containers are not storm shelters. And the reason they're not is severalfold. They're not built to be storm shelters. People were buying them and immersing them or putting them against earth. They're not made to support earth on the sides. They're also not because they don't afford ventilation, and they don't have appropriate door locks on them.

Morical How about if we assume for the sake of argument that it cannot be a storm shelter?

Schiferl Okay. Well if it can't be a storm shelter, and that's exactly what the variance here is for, if you assume that –

Morical Oh, no, his variance is requesting putting this nonconforming use in his backyard. Whether it's for storage as to what his initial application was or he wants to use it for a storm shelter, the question is whether or not he can put this cargo container with an earthen mound over the top of it in his backyard.

Schiferl Mr. Morical, I dare suggest that if we were to go out and interview our public citizens in this city that there would not be an uproar for people putting cargo containers at level with earth around them and suggesting it'd be a variance that would be allowed, but it's important because –

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Morical But do we limit people in how they use things? He could say he's going to use it for one thing or he could use it for something else. The reason we're here tonight is he's requesting a variance to place this cargo container with an earthen mound in his backyard and the questions we have to answer are the three about the variance and the issue of whether he uses it for storage, he uses it as a storm shelter, maybe that's ill-advised per FEMA, or he uses it as his kids, you know, camping spot, whatever it is. We're not so focused, unless you want to point us to the first element, and say that he hasn't met his burden because it's against public health, safety, and morals and we could talk about that, but absent that, what we're talking about is a structure that's visible from your backyard and the question is whether or not he has met the burden of proof as it relates to these three elements.

Schiferl If I could, please, finish. What this gentleman said, not me, is that he wants to use it for a tornado shelter, and in the three findings of fact that he submitted, which I'm going to respond to, he suggests that it would be something that would be helpful to the community and in fact goes on to say that it would positively affect adjoining landowners, such as myself, so we could use it during approaching storms. Now that's finding of fact #2. If that's true is Mr. Lyons going to give a license to its use to others as he suggests? Is he going to give an easement for my access to it as he suggests would be allowed? Is it going to be unlocked or accessible? Is it going to have ventilation and is it going to meet standards? I didn't finish with all the standards by the way. In addition to FEMA, there's a standard called ICC 5000, ICC/NSSA, National Structural Safety Administration, Association, and it talked about what is a safe facility and so grant #1, will this be injurious to the public health, safety, morals or general welfare of the community? The answer to that is absolutely because it does not meet any engineering standards. It meets no –

Morical But how does that hurt the community?

Schiferl Well –

Morical I mean I guess again, that's where I said assuming he just uses it for storage. Because we're here about the structure.

Schiferl Sure.

Morical How does it hurt the community?

Schiferl The same way that never having a building code would hurt the community, sir. The answer to your question is if what you mean is to not have building codes, which we have plenty of, we could do away with building codes and it hurts the community to allow structures to be erected that we as a community have not verified as being safe. Let's remember –

Morical You mean to be used for a purpose that appropriate bodies have determined is unsafe.

- Schiferl This will be used beyond just, if allowed, beyond just Mr. Lyons' tenure on this property. More importantly, the notion that you're asking about is he's applying for a variance for this. He's already done this, of course, and asking afterwards about it, but the, I want to focus on your three findings of fact. And if I may approach I've actually prepared three findings of fact, and I want you to directly ask about, proving a burden of coming forth to this Commission or this BZA with a burden to prove the entitlement to a variance. And there's three reasons why. And I just talked about the evidence of public health, and as I put here and it's true, there's no evidence of any convincing nature that the item presented for variance is safe for occupation, even temporary. Further, the general welfare of this community should not encourage in any way, shape or form the use of storage containers in Zionsville. #2, has to prove that the use of the adjacent area will not be affected in a substantially adverse manner. Well, I have perhaps one of the largest investments in my life in my home and property, which we've improved since we moved there, including getting a barn. We had to get a variance to build a home and improvements to it and the use and value of that will be affected by allowing a metal cargo container to be installed when no other community in Boone County or the Central Indiana area allows it.
- Morical Now, let's talk about that, because I think this may be your strongest argument. So you're saying the visibility of this feature from your property substantially adversely affects the property value.
- Schiferl There's several things here. Yes, I am saying that. I'm also saying that in this community it would adversely affect if you allow, where do you stop. I'll buy the house next to you and put one up and throw dirt along it and –
- Morical As you know, Mr. Schiferl, we're not a legislative body. We act one at a time under the facts and circumstances presented to us. So we're talking about the cargo container under the earthen berm that's 135 feet right to use your words from your back porch.
- Schiferl The answer to your question is absolutely, yes, because I then would be the only person in Zionsville with a home of some substantial worth and acreage with an earthen berm over a cargo container in my backyard. The only one.
- Morical But it's his backyard.
- Schiferl I absolutely would be adversely affected by that.
- Morical So it's his backyard though, right?
- Schiferl It's in his backyard, but it's, sir you could see. Not only I could see it and this is indisputable. We could get tape measures. That is closer by multiple yards to my home than it is to Mr. Lyons' home, which gets me a little bit back to the FEMA. I know you interrupted me, but if you look at the FEMA regulations, they tell, if you're going to build a storm shelter, you do it near your home, so you're not running to a storm shelter and that's where people get hurt more than anything.

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Morical As much as I love the federal government, I don't necessarily feel like we need to dictate to our citizens that they do absolutely everything that FEMA recommends.

Schiferl That's why I also referenced the ICC, which we do adopt the IBC building code, which is an ICC in our town and that, too, has standards. You have to make sure there is appropriate support walls, etc. and none of that was done. I want to get to the third point as well. In addition to the finding of fact #1 not being proven, finding of fact #2, we get to finding of fact #3. There is absolutely, unequivocally no hardship shown or proven by the petitioner and with all due respect I think that this is the strongest point, sir. The point of this is you have to prove a hardship that if you don't allow the variance. Here, and we looked it up today, it's available in Boone County records, the Lyons' home has three-quarters of a basement of a large home with a crawlspace. Now, my wife, she'll probably talk here as well, grew up in a home with a crawlspace, and that's where they went during a tornado. There is no hardship at all to not allowing a storage facility/cargo container/whatever you want to call it out here to this petitioner. There's a large home with already another structure out there, which is a three-car garage with an office over it and they have to prove a hardship, and this is not a hardship.

Morical That's why I asked whether or not he had a basement.

Schiferl Well and that's why I thought the question was an excellent one because that's some of the information we have here, but more importantly, just having a basement, the one thing that I found of note tonight, and I wrote this down, was when Mr. Lyons was talking about why this is needed, and again the emphasis by the petitioner, not by me, has been on the notion of the storm shelter, and that's why I want to mention it.

Morical Obviously you can see the earthen berm from your property, can you see that it's a cargo container?

Schiferl Yes, because the portion of the cargo, and I sent the pictures in, is not under earth. I mean the whole thing is not under earth where the doors are that face to the west coincidentally where tornados would come from, is exposed. And right now –

Morical And that's visible from your property?

Schiferl Technically, your answer is in the summertime no because of the deciduous trees. In the fall, as we come into fall and wintertime here and into spring, the answer is absolutely it is. But what I was going to say is with regard to the notion that was mentioned, I think this is important again, because of the storm shelter being all of a sudden the issue, a comment was made that, well, we wanted the storm shelter because we're worried about, certain people in my family were worried about a house caving in on them. I think that's a tremendously good concern that someone might have, and I'll accept that as a concern.

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Well if that's the concern, wouldn't you also be concerned about having a cargo container under earth where there's been no engineering of it. There's no ventilation. There's no appropriate steps to be taken to make it into a storm shelter. For those reasons, and the reasons I think we spelled out in the comments to the findings of fact that I submitted, and the fact it's already been determined to be an inappropriate use of cargo containers on this property, we'd ask that the variance be denied.

Morical Okay, thank you Mr. Schiferl. Are there any other remonstrators here tonight? Please state your name and address for the record.

Schiferl Carolyn Schiferl, 8552 East 550 South, Zionsville.

Morical To respect everybody's time tonight the questions, if you've got anything else to add that would be great. Otherwise –

Schiferl The only thing I want to add is that my whole thing with the process and all that is that I want people to call a spade a spade. What are you doing with it and is that safe for the community. So it started with shooting and then storage and now tornado and whatever, I think to respect the property if you let this property owner say what he's doing with whatever and allow it, you're going to allow other people, you might not, but other people will say well they can do that over there, I'm going to do that over here, and it's just a slippery slope. So I respect what the codes are and the hardship, the hardship we had with our barn was the width of our property, so we couldn't change the width of our property. So we showed that we had a hardship that was granted once they approved what our barn looked like, so we followed, but we didn't build the barn first, and then come and say oh –

Morical I know, I completely agree.

Schiferl That's what I want to add is that please respect the process.

Morical Right, thank you. We try to respect the process. Are there any other remonstrators here tonight? Mr. Lyons, would you care to come back up?

Lyons I would like to let the Board know that I certainly did not, when filling out an application for permit, try to mislead anybody about, as I said, I'd never done that before. I hadn't been in that situation. They asked me what it was on the application and I put down it was two storage units, so I didn't do a very good job of saying what I needed the permit for apparently.

Morical So what was your original intent for this structure?

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Lyons My intention was always that I have three children and I have a soon-to-be wife that's scared to death of being buried under whatever would be left of a home. So that was always the intention. I would've went through all of that. On this, actually in some of the Staff findings I think they said you could've certainly set it out there and wrapped it in siding and put a roof on it. Yeah we could've done that, but that doesn't really offer any protection from any kind of severe weather.

Morical Mr. Schiferl talked about the standards that apply to storm shelters. Does any of that concern you that this structure won't, that the government feels this structure won't adequately serve that purpose?

Lyons Yeah, I have the ISO shipping container standards. The roof on that container will hold a minimum 330 pounds per square foot. It's, you know your basic snow ledge is about 30 pounds a square foot. They've laid 423,280 pounds of downward force. I mean they stack these things 10 high with 50,000 pounds in them, so you know it's being used, well 100 mile an hour winds, extremely solid in tornados and hurricanes. They actually use them for earthquakes. Michael Lathrum, the building inspector, when I came, one of the times I came in I addressed, you know building code what, you know what do we need. He said for the size of this he said you need nothing. It's 160 square feet, so it doesn't, you know there's no building code that even applies to the structure. I certainly do not want to put anything in on my property or anyone elses that's going to affect property value or anything like that. You have a photo that actually Owen took and it was on the other side of my fence looking across. I don't know what Mr. Schiferl's looking at because you can't see anything but grass, which I mow, so you know I don't, I'm not trying to start a war here. I just wanted to have something in case we were to need it and –

Morical Can you help us understand why you sited it, why you put it where you put it?

Lyons Yeah, it was, that was in an area that was not, it wasn't being used for anything. Actually it was grown up whenever I bought the home two years ago. So there wasn't anything back there, but tall grass and weeds.

Morical To Mr. Schiferl's point about what appear to be the targets, do you use that as essentially the backdrop of a shooting range?

Lyons Do I use –

Morical The earthen berm to –

Lyons We have not. I did check with the Sheriff to make sure that that was okay. It was one of the reasons that I, you know, wanted to buy 11 acres out in what I'll call "country," so that we could do that if we wanted to get out there and shoot skeet. We're not shooting anywhere towards anyone's home or where anyone could be injured. As a matter of fact, my children were out there learning to shoot, so you know we're not endangering anyone there.

Morical So the red and white sawhorse –

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- Lyons That is a target.
- Morical Yes, okay.
- Lyons Now it just happened to –
- Morical And so you're shooting into the earthen berm, is that correct?
- Lyons I have never once shot at that target. It just happens to be sitting there because I purchased it, and we have never utilized that target. We have not shot at that thing one time so. No, actually my intention was probably to dig into the side of that bank and set the target back in it with the sand berm behind it for any kind of deflection or any, you know, shrapnel.
- Morical I understand. Okay, thank you. Are there any further questions for Mr. Lyons?
- Wopshall Would you consider moving that container closer to your house?
- Lyons I guess I could. It's, I wheeled it off from the backdoor. It's about 175 feet.
- Wopshall That's a long way to go in a storm.
- Lyons Like I said I was in hopes that, you know, a guy would have a little more notice than that, but you know you never know.
- Morical Any other questions for Mr. Lyons? Hearing none, Mr. Schiferl would you like to say any further words?
- Schiferl You have aerial photographs. Math is math. This shelter that he calls a shelter is not 175 feet from his home. It's 135 feet from my home to the fence and if you look it is at least three or four times as far away, and I appreciate the question that was asked about moving it because, again, if you're going to have a device to provide protection of your family it seems as though it should be near where your family would be and not fields away. Math is math. This is placed there in the vicinity of our home. I would also want to respond to this notion of someone asked about the shooting. I can tell you what we witnessed. I don't want to get into that today, but it's not what was just stated.
- Morical Okay, thank you. Wayne, may we have the Staff Report, please?
- DeLong Thank you. Certainly this is a complicated petition given its history. Certainly Staff has in totality, speaking when the permits were issued, subsequent to the cargo containers being installed on the property, steps have been made to remedy the situation. All that history has been covered here. That certainly brings the petitioner here this evening seeking a request that's been articulated by the Board and certainly the petitioner's submittal. Certainly Staff is, you know, supportive of the conception of someone's desire to install a structure on their property to provide for their life safety.

Staff is not here to evaluate the means and methods and how many structures one needs or doesn't need to provide adequate safety certainly related to having a basement versus having a separate tornado structure. Staff is again supportive of the petition in concept. Certainly there's a couple of concerns that we've outlined in the Staff Report. One is the life safety aspects of the structure, the Indiana residential code, which is the code that the State of Indiana is under, ICC adopted certain printing and certain versions of that, but ultimately and then Indiana amendments, so it's a somewhat complicated conversation as to what exactly, what code we are under. It's not simple to go to the library and just pull the code off the shelf. You have to integrate the Indiana amendments into the particular adopted version by the State of Indiana. Given that, emphasizing this is the Indiana residential code we are speaking about, as this is a residential property, when accessory structures, using that term here, are under 200 square feet, the code is rather limited in its language often leaving it up to the local jurisdiction if you will to determine, you know, what is acceptable for permits. Certainly when this came in as storage buildings, the permits were issued based upon that and subsequent review pulled those permits. Again, there's been a lot of discussion this evening. Certainly the second item is listed in this Staff Report is the second concern being how do the neighbors feel about this petition and certainly that's been articulated this evening. This is a difficult petition for the Board to review. There's a lot of information to consider, but barring satisfaction of the issues that have been presented, Staff is supportive of the petition, and I'd be happy to answer any questions.

Morical Thank you, Wayne. A couple of questions for you. Mr. Schiferl talked about how cargo containers are, as a general matter, frowned upon for any type of even temporary personal habitation for any use like this. Have you come across anything along those lines?

DeLong That's certainly true. I mean from Staff's review a metal container is not a structure that you see typically in the community. Certainly you cannot go to any particular big box retail store and buy a kit that allows you to assemble this type of structure. Oftentimes, you know, this type, any type of premanufactured unit would be brought onto a property the Staff would be looking for some sort of engineered information or manufacturer's data that it says that it can be utilized for whatever purpose that has been suggested.

Morical Right, but have you seen affirmatively out there in the building community that there's something wrong with using cargo containers for this purpose?

DeLong Is there something affirmatively –

Morical Mr. Schiferl said that they're specifically frowned upon in communities to be used for this purpose. Have you come across that in your profession?

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DeLong I have not seen in writing an ordinance that says thou shall not use this particular structure on a residential piece of property. Now it is up to the individual jurisdictions to interpret, much like we've done here, to determine what's an acceptable accessory use. In our particular case we define accessory uses as ones that are customarily associated with residential. You do not find storage containers customarily across any given community, be it rural or urban. Now, I can say that I have seen storage containers at agricultural properties used to store implements and other things. How those arrived on a property in rural Hamilton County or rural Fayette County I could not tell you.

Morical Have any of the other owners of areas adjacent to the property complained?

DeLong I'm not aware of any other remonstrants or concern to this petition, except what has been presented this evening.

Morical Okay, thank you. Any further questions for the Staff?

Wopshall I have a question for Carol on this. Suppose we approve this facility we'll call it. It's a structure and if something happens to the people on the property, is there a liability to us for approving something that wasn't designed for human use?

Drake I would prefer to talk to you about your potential liability not on the public record. I do believe that your charge is to determine whether the petitioner has met their burden, one of which is that this will or will not be injurious to public health and safety.

Wopshall Okay.

Morical Any further questions for Staff?

Jones I've got just a general comment, but not so much a question.

Morical Larry, what's your comment.

Jones So my comment is related to page 2 down there at the bottom. It sort of sums it up. What we're working on here is setting a precedent to establish that the characteristics of the improvement are indeed residential in nature. So what we're being asked is to set the precedent that covering a structure with soil will be considered an acceptable exterior finish for a structure. I don't really think the containers are the issue. If Mr. Lyons had wanted to pour a 10 foot thick concrete pad and bolt this thing to it and then put a typical pole barn or some other kind of architecturally designed structure that would've been compatible with the area and his house, I doubt Mr. Schiferl will have any care and it would be perfectly suitable for a tornado or storage or anything else. In this case he's put this out there and then covered it with soil. Similar, but you know different is the issue that if you build a 45 foot tall house in an area that's zoned for a 35 foot tall home and then try to say well I'll pile up 12 feet of soil around it and it'll now be 33 feet tall, I think we have a certain amount of history in turning that kind of stuff down.

So I think the issue here when it comes to the findings of fact that this falls apart is that when it comes to item #1 the general welfare, does this commission want to set a precedent that covering something in dirt is considered an acceptable exterior finish. I'm not particularly happy going down that path. I think we also have troubles with #3. Strict application affects the use. You know Mr. Lyons is free to do what I just described, build a building with a structure in it that could withstand anything. He's also free to go into the basement of his home and build this structure, so what he's saying is that this is the only type of structure that's acceptable to him and I think that doesn't quite meet the standards that, you know, strict application of zoning will not result in an unnecessary hardship in the use. He can use his property however he wants and if he wants to use a portion of it to build a tornado approved structure he can do it in his basement with proper permits. He can do it on his property as long as he meets some of the architectural standards that every other resident of Zionsville seems to be able to meet when it comes to putting up accessory structures on the property. So my core issue is I do not think covering a structure in soil should be a precedent for an acceptable building material or finish in Zionsville.

Wolff So if the petitioner took the structure and put a cement pad down, put the structure on there, and essentially built a barn, a shed, a structure siding it and made it look appropriate your position would be different?

Jones Correct.

Wolff Appropriate meaning that it would match the exterior of the house and it would you know not –

Jones I mean there's certain, once again there would be certain other, you know, building code and zoning and other –

Wolff Absolutely, yeah. I made the, so then is your position that because it's covered in dirt it affects the neighboring property's value because it doesn't meet the standards of –

Jones I think it's more that we're heading, we are establishing a precedent that you can consider covering something in dirt an acceptable exterior finish.

Morical The challenge we have in front of us, and I hear your concerns, Larry, but the challenge we have in front of us is these three elements he needs to prove, none of which talk to an "acceptable architectural finish" unless it relates to the second one, which would be that it substantially adversely affects the value of the adjacent property.

Evinger And that's where I have my concern is just the value of the property being affected, especially when it is 135 feet from his backdoor, and he would be the only one in Zionsville that would have that structure behind him. Potentially that could have a truly adverse effect on his property. Now I don't know do we need to quantify how many people it would affect in order to be able to disprove #2.

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But I think that when we have this as a standard, the use and the value of the area adjacent to the property, he's adjacent to the property, and it potentially would affect his value.

Morical The petitioner has the burden of proving that what they're asking for does not affect the adjacent property in a substantially adverse manner. So if there's a concern, a legitimate concern that there is going to be an adverse, substantial adverse effect, then they would've not met that burden, and we would not grant the variance. Any further questions or discussion among the Board? If none, I would entertain a motion.

Jones I'll make a motion. I move that Docket #2016-18-DSV, design standards variance, to provide for an accessory structure which does not comply with the standards of the zoning ordinance structure, as contemplated, and is not customarily associated with the residential area in the R1, Rural Residential Zoning District, be denied as presented.

Morical Thank you. Is there a second?

Wopshall I second.

Morical All those in favor –

Drake I would just note before you vote that, or I would recommend that your vote be subject to findings of fact being prepared consistent with your vote and submitted to you next month for your consideration and action.

Morical Thank you, Carol. Larry would you be amenable to amending your motion?

Jones Yes, I would be amenable to amending my motion.

Morical Larry are you up or Al are you up for another –

Wopshall Yes, I'm agreeable to that.

Morical Thank you. All those in favor, please say aye.

All Aye.

Morical Any opposed? Motion carries. Thank you very much. So your petition was denied Mr. Lyons. The next item on our Agenda is Docket #2016-23-SE, 1567 North 1000 East. Ms. Squires.

Andreoli Thank you, Mr. President. For the record my name is Mike Andreoli. I'm here representing Madalyn Squires. We have two things on your Agenda tonight and I know you've got a very full Agenda after this, so I'm going to try to be as brief as I can.

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We are asking for a special exception to locate a single family home in the ag district, which we're required to do, and in addition we're requesting two variances, a road frontage variance and a 3 to 1 lot ratio variance that will be necessitated by virtue of the fact that we have a private drive going back to serve the properties. I would, before I forget about it, I know there was a request in the Staff Report to have a right to farm covenant implemented to the extent that you grant approval of these variances. We're happy to do that, and in fact, since we have very brief covenants and commitments that will be recorded with the plat, we will be happy, if it's permissible with Carol, to go ahead and put the right to farm language right in the actual covenants that will be recorded with the actual plat itself. It seems to me that's a better document than having two separate documents floating out there with regard to a commitment, but we'll leave that up to Carol to decide. I'll do it either way, but it just seems to me that would be a good suggestion.

Morical So we don't forget, Mr. Andreoli, does that work for you, Carol?

Drake That works for me if he uses all the magic language.

Morical If it comes from you it's magic.

Andreoli Well, by God, I'll take that to the bank then.

Morical Thank you.

Andreoli Dr. Squires has lived on this property, this particular house right here is served by this drive for 25 or 30 years. She is now downsizing. She is nearing the end of her practice and that house is much larger than she needs, so she is downsizing and will want to sell this particular house and build a much smaller cabin closer to the lake. In essence what we've done by way of receiving plat approval is subdivide this into two separate plots, a 6 and change lot for the existing home where she currently lives and the 13.73 acres for the lot that she will have for her new cabin that she's going to build closer to the lake. There's no topographical features with the property itself that would prevent an orderly development of one single family residence or any approved accessory structures on this particular lot #1, soil borings have already been done. That will have to be submitted to the Health Department to when she seeks to go in to get her building permit to make sure the septic has been designed, and they will take care of all of that. Weihe Engineering has put the plat together and is helping design that particular system. Hardship with regard to this particular property and the reason we want to use this particular road access, if you're looking at that and you're actually using this road access as an appropriate road, you really don't have any 3 to 1 lot ratios. The actual lots themselves are fairly uniform in nature; however, when you apply it to a road frontage out to the public street, the 3 to 1 lot ratios come into question and that's why we would seek a variance for those as well as a road frontage variance. We have to locate for her second lot off of this particular drive. This is a county legal drain, and this drain serves as the outlet for the large lake that's there.

It was owned by the Best family and that lake from time to time has a fairly good spillover and so occasionally there's quite a bit of water that runs through this open tile. We have 75 feet of legal drain on either side of that particular open drain and to try to get across that by putting some type of road frontage over here or of any way reconfiguring it other than the way we've done it would create a particular hardship with regard to being able to get over that tile. In addition, Dr. Squires owns all of the property around it and that is all tillable acreage and that will be kept in tillable acreage, and she won't be able, under your rules, to come in and get additional splits for that particular ground and so because, obviously, those transfers will have been made after I think 1999 and she is not entitled to those. So she's got all the ground around it. That's all tillable acreage. That will remain. This ground will be the development parcel for the two lots, one existing and one to be built, and we just thought that that was a particularly good layout not having to try to reverse that county legal drain, which has some capacity to it at various times. So I'll be quiet and happy to answer any questions that you have.

- Morical Thank you, Mr. Andreoli. Any questions for Mr. Andreoli? And this would be with respect to both of the petitions?
- Andreoli Yes, yes. If that would be permissible, Mr. President, we'll get them both out of the way, and my comments would address both.
- Morical I think we'll need to take action separately, but we might as well work with you discussing them together. So any questions for the petitioner's representative?
- Evinger Have you already spoken with FEMA then just because it's in the special flood hazard?
- Andreoli I couldn't hear you.
- Evinger Oh, okay. For the special flood hazard, have you spoken with FEMA? Are there going to be any building restrictions?
- Andreoli No. The actual flood area was so designated on the plat that was approved. All the structures are out of that. There will be no structures in that area. There won't be any special requirements or exemptions that we will need for that. All of the, this house is sitting on much higher acreage. This house will not be in any floodway or flood control and then she's got 13 acres, so the area of septic and the area was designated well away from the lake in that particular area, so we don't anticipate any problems with the soil borings or the actual soil conditions out there at all.
- Evinger Okay, thank you.
- Morical Any further questions for Mr. Andreoli? Hearing none, are there any remonstrators here tonight? Seeing none, may we have the Staff Report, please?

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- DeLong Thank you. Staff is supportive of the special exception request and the variance request that's in front of you this evening. It's tied to a preliminary plat that received approval at the last Plan Commission meeting. The petitioner would follow up that action with the submittal of a second plat for recordation based upon the action of the BZA this evening. Certainly Mr. Andreoli's articulated the request. Certainly Staff's appreciative of the remainder of the acreage being left in tillable and certainly if any additional splits were to come forward those would be approached and dealt with via your subdivision approval process and with the Plan Commission. Again, Staff is recommending approval of the special exception petition and the variance request as filed, and I'd be happy to answer any questions.
- Morical Thank you, Wayne. Any questions for Staff? Hearing none, I would entertain a motion first on petition #2016-23-SE.
- Evinger I'll do that. I move that Docket 2016-23-SE, special exception petition in the Agricultural District for the property located at 1567 North 1000 East, Sheridan, Indiana 46069 be approved based upon the Staff Report and the proposed findings as presented.
- Morical Thank you. Is there a second?
- Jones Second.
- Morical All those in favor please say aye.
- All Aye.
- Morical Any opposed? The motion carries, and I would now entertain a motion as it relates to Docket #2016-28-DSV.
- Wopshall Okay, I'll make a motion. I move that Docket #2016-28-DSV, design standards variance petition of lot ratio and road frontage to construct a new residential building in the Agricultural District for the property located at 1567 North 1000 East, Sheridan, Indiana 46069 be approved as filed and based upon the findings of fact.
- Morical Thank you, Al. Is there a second?
- Wolff Second.
- Morical All those in favor please say aye.
- All Aye.
- Morical Any opposed? The motion carries.
- Andreoli Thank you very much members.

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- Morical Thank you, Mr. Andreoli. The next item on our Agenda is 2016-24-SE, 7750 East 100 South. If the petitioner would please approach the podium and state your name and address and give us a brief summary of what it is you're requesting tonight.
- Kruse Good evening, I'm Dale Kruse. I own Kruse Consulting, which is a civil engineering and land surveying company in Avon. My address is 7384 Business Center Drive in Avon, and we're here this evening on behalf of Mr. Cope and his wife. They are the petitioners this evening and neither one of them could be here tonight for family obligations, so I am representing them. We are here this evening asking for your approval of a special exception to allow them to build their home on this property. This property is located at the, I think it's in your packet, if you have the same packet I do. I think it's in your packet. It's located at the northwest corner of County Road 100 South and County Road 800 East, which is about 8 miles east of Lebanon. And that's about as simple as it gets as far as the petition goes, so I'll beat Mr. Andreoli, and I'll be even briefer than he was. I respectfully ask for your approval this evening for this special exception.
- Morical Thank you, Mr. Kruse. One question for you. In the packet it wasn't clear where the house is going to be or how large it's going to be. Are those things known?
- Kruse He hasn't really picked out his location of where he wants the house to be sited on the property for two reasons. #1 because it's been in crops, so he hasn't really had a chance to be out on the property to determine that and #2 he wants to build a pond on the property and so I'm going to help him to figure out where this pond makes the most sense for it to be on the property. We haven't put any of those details together yet. I do have a picture I brought with me. I could share with you if you like, but Shane gave me an idea of the type of home that he wants to build. Although the plans haven't been purchased. There's been an architect that has not been hired, but he did give me, because I thought that question might come up, so I asked him to give me an idea of what kind of home he'd want it to be. Mr. Cope is a dentist, and his home, I'm sure, will comply with any of your regulations and ordinances, and I'll give this to you as a representation of what he may build, but not as the representation of what he's going to build.
- Morical That'll be fine. If you'll bring it over that would be great.
- Kruse I have multiple copies if you want.
- Morical Sure. Thank you. Are there any questions for the petitioner's representative?
- Evinger If for some reason the soils wouldn't allow for a pond, would he still move forward with the project?
- Kruse I believe he would.
- Evinger Okay.

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- Morical Carol, is this petition ripe without an idea, a clear idea as to what they would build and where?
- Drake Because it's a special exception?
- Morical Because we need to answer the question whether or not the proposed use is going to be consistent with the character of the district and so on. Do we need more information?
- Drake I think the use is residential if you're comfortable with this being a residential use on this particular acreage.
- Morical So that would be a single family home.
- Drake Correct.
- Morical Of whatever size.
- Drake As long as it complies with any applicable zoning requirements.
- Morical And the building code, right?
- Drake Yes.
- Morical So otherwise we don't need more detail at this juncture?
- Drake Not for a proposed use I don't believe so.
- Morical Okay, thank you. Any questions for the petitioner? Thank you, Mr. Kruse.
- Kruse Thank you.
- Morical Are there any remonstrators here tonight? Seeing none, may we have the Staff Report, please?
- DeLong Thank you. Staff is supportive of the petition as filed. Certainly it's a great point to discuss the level of information tied to where the home would be sited, that it's a single family dwelling and the potential residential characteristics of the particular dwelling. Staff would offer in lieu of having those direct answers to that the area on the north side of 100 South starting from 7660 all the way over to 8250 you have, as a Board, seen various requests on this particular stretch of roadway for up to 10 different homes or you will see petitions for up to 10 different homes over the next several years. The property to the west, 7660 is Sheldon Bradley. He approached the Board of Zoning Appeals and gained a special exception for the single family dwelling that you see on the aerial. He also had to go through the Board of Zoning Appeals for a particular lot layout and that particular illustration showed several potential home sites which he would go through platting in the future if he so chose to pursue that particular request. At 8250 that property also recently came through the Board of Zoning

Appeals for a variance request related to lot depth to width ratio for four home sites and that property then went through the Plan Commission for subdivision and that plat has been prepared to be recorded. So the residential characteristics that you see and discuss this evening are actually more intense if you will than what you see on their photograph and so certainly one home on the 29-acre tract would fit in, in this Staff's opinion in this area. Again, Staff is recommending approval of the petition, and I'd be happy to answer any questions.

Morical Thank you Wayne. Any questions for Staff?

Evinger I guess I just have one question and that was back in 2010 there had been some protection put in place for agricultural land, this is not falling underneath any of those covenants is it?

DeLong I'm not aware. Certainly the petitioner and maybe his representative could speak to that this evening, if there's any intention to preserve any of this acreage for additional or continued agricultural use. In speaking with the petitioner, myself I believe that's the intention is to have some area left aside to support agricultural production.

Kruse Well, I agree. I don't know how much and to what extent, but there will be a pond. There will be yard and there will be tillable left because his intent is not to mow or upkeep on whatever the balance is after the property, after the pond is sited on the property.

Evinger Thank you.

Morical Any further questions for Staff? Hearing none, I would entertain a motion.

Wolff I'll make a motion. I move that Docket #2016-24-SE, special exception petition in the Agricultural District for the property located at approximately 7750 East 100 South be approved based on the Staff Report and the proposed findings.

Morical Thank you. Is there a second?

Wopshall Second.

Morical All those in favor please say –

Evinger May I amend this just really quickly. We also have that they would execute a right to farm acknowledgement.

Wolff I'm amenable to that.

Wopshall Second.

Drake If he's included that in the motion that would be best.

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Morical To amend the motion.

Drake Your presenter did not address the right to farm, and I think John just amended his motion to include that requirement.

Morical Right, so Mr. Kruse is your client amenable to –

Kruse Yes, we've been made aware of that.

Morical And they will sign a right to farm acknowledgement?

Kruse Yes.

Morical Okay, thank you. So has the motion been amended?

Wolff Yes.

Morical Okay. Thank you. And there's a second?

Jones Second.

Morical Okay great. All those in favor please say aye.

All Aye.

Morical Any opposed? Motion carries. Thank you, Mr. Kruse.

Kruse Thank you very much.

Morical I'm interested to see whether these palm trees make it in the –

Wopshall There are palm trees there?

Morical In the rendering there are.

Wopshall Oh, yeah.

Morical A total of one, two, three, four, five, six palm trees.

Jones We did approve this picture didn't we? He has to –

Morical I think he made a statement that he was not committing to build this exact thing.

Jones Will there be fans around the lake?

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Morical That's okay. The next item on our Agenda is Docket #2016-25-DSV, 540 Isenhour Hills Drive. Mr. and Mrs. Briere. Thank you for hanging in there with us tonight. If you'll come up and state your name and address for the record that would be great.

Carnell Chris Carnell with Christopher Scott Homes, Carmel, Indiana, 736 Hanover Place. We're here today to petition for a lot coverage variance from the 20 percent standard lot coverage to a 24 percent coverage to allow for the installation of a pool surround on a new construction home located at 540 Isenhour Hills Drive, and I'm representing Tom and Christine Briere on this petition.

Morical Thank you. Do you know if there are any water runoff issues as it relates to this property?

Carnell There are no runoff issues as there's proper drainage at the very back of the property that basically dumps out down the golf course area.

Morical So all of the drainage and water flow comes off the property and moves to the east and into the woods.

Carnell To the rear, east.

Morical Okay, thank you. And these materials you're planning to use are pervious anyway?

Carnell They are pervious, they are partially impervious, but what we're trying to achieve is a less impervious pool surround by utilizing the stone pavers along with crushed gravel, decorative gravel, that's in between the pavers, so the pavers are approximately 24 x 24 to 30 x 30 with about 6 inch spaces in between. So our goal is to try to reduce the impact with impervious lot situation.

Morical And all of that structure will be built at grade?

Carnell Correct.

Morical It won't be raised up?

Carnell Correct.

Morical Okay, thank you. Any further questions for the petitioner's representative?

Jones I've got a quick question. We're looking at 540 Isenhour Hills?

Carnell Correct.

Jones So the aerial doesn't match the plot plan. Am I looking at this incorrectly?

Carnell They're blowups of the aerial, so you're looking at the very back, the blowup is.

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- Evinger Is that the preexisting home or is that a different home?
- Carnell What aerial are you looking at?
- Evinger We're looking at this particular aerial.
- Carnell So that would probably be a preexisting home that was removed.
- Evinger Okay.
- Jones All right, so this is a new home –
- Carnell A new home, which if you look at Exhibit A and B that I attached with the packet, that shows the layout of the new home that is basically constructed and the proposed pool surround and how the pavers will look.
- Jones Okay.
- Morical Okay, so the structure that is exhibit, that's pictured in Exhibit A has been taken down, is that correct?
- Carnell So my Exhibit A, let's see, I didn't submit that aerial.
- Morical Okay, this is in I believe the Staff's –
- Carnell That might've been the Staff, but that structure is gone. That is no longer there.
- Morical Okay, great.
- Carnell On that aerial.
- Morical Thank you. Any further questions for the petitioner?
- Jones Real quick. The drainage easement in the rear, which way does it drain? North or –
- Carnell The drainage easement in the rear, are you talking about for the sewers? There's a sewer easement in there.
- Jones Well, there's a utility easement.
- Carnell Yeah there's utility and sewer easement in the rear. Those run north/south of the property, but there's no drainage easement or anything of that nature that I'm aware of.
- Jones Where does the lot drain to then?

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- Carnell The lot just naturally drains to the rear as it always has. The same with the neighboring lots. And that utility easement is at a lower elevation than these parcels.
- Wolff I don't think it shows it well. Would this back up to the golf course? And everything goes. Yeah, if you're familiar with #9 it's the elevated "t". The elevation portion of it.
- Carnell That's correct.
- Wolff And it all goes down.
- Jones So do you play to the left or you –
- Wolff Now, I could hit their house with my golf shot, but that's probably not up for discussion tonight.
- Morical Yeah, the question could you intentionally do it?
- Wolff No.
- Morical But, no, we won't make you answer that one on the record. Okay, any further questions for the petitioner? Thank you very much. Are there any remonstrators here tonight? Seeing none, we'll ask for the Staff Report, please.
- DeLong Thank you. Staff is supportive of the petition as filed. Certainly, Staff recognizes that you seldom hear requests for lot coverage in the R-SF-2 district. Generally speaking the lots are generous in size and, therefore, Staff feels that that's a limiting factor in why you seldom hear the request. Certainly, Staff, you know, applauds the petitioner's approach to creatively dealing with the creation of impervious surface while using crushed stone to help mitigate the issues that are intended to be conquered if you will be limiting the lot coverage to 20 percent. Again, Staff is recommending approval of the petition as filed, and I'd be happy to answer any questions.
- Morical Thank you, Wayne. Any questions for Staff?
- Evinger Wayne, just one question. Have we had very, I mean you were just saying that there's not very many of these that have come before us. Have we had other homes that are the R-SF-2?
- DeLong I'm not aware of in the R-SF-2 having been on Staff here for nearly five years. There could've been petitions prior to, I mean you generally hear petitions in the residential village area where lot sizes are 6,000/7,000 square feet.
- Jones Is there any concern about the proximity of the driveway to the property line?

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- DeLong There is no zoning district, except for the Residential Village District that has a setback related to driveways. In all districts you can place a driveway up to the lot line barring the presence of a utility easement, and if that is there you certainly have the right to pursue an encroachment request. Those may or may not be granted depending on what type of utility is in there, depth of pipes, so on and so forth, but again barring the presence of a utility easement.
- Jones Okay. I just remembered we had a variance request for a driveway close to a property edge.
- DeLong That was in RV –
- Jones The residential village, okay.
- Morical Good question. Any further questions for Staff? Hearing none, I would entertain a motion.
- Jones I'll go ahead and make a motion. I move that Docket #2016-25-DSV, design standards variance to exceed the R-SF-2, Urban Single Family Residential Zoning District, lot coverage requirement of 20 percent to 24 percent to allow for a stone paver pool surround, stone paver deck, and stone paver walkway system be approved as filed and as presented.
- Morical Thank you. Is there a second?
- Evinger Second.
- Morical All those in favor please say aye.
- All Aye.
- Morical Any opposed? The motion carries.
- Carnell Thanks.
- Morical Thank you very much. The next item on our Agenda is Docket #2016-26-DSV, 360 West Linden Street, Mr. and Mrs. Powell.
- Rottmann Hello. Todd Rottmann with address 320 West Hawthorne Street. Never have I had so few people interested in a project before. This is pretty weird.
- Morical Well, for the record, we're interested.
- Rottmann Excellent. So I'm here tonight on behalf of Mickey and Diana Powell. They are out of town on a trip that they had planned ahead of time, so I've got a letter that they had written in regards to this petition. It's included in the packet. I don't know if everybody has read it so I don't need to re-read.
- Morical We have, yes. Thank you very much.

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- Rottmann Good, we can fast-forward. All right. Several comments. They do have a drainage issue. The alley was recently paved and now contributes to flooding in their garage. It's also contributing to flooding in the barn of Mr. Turley immediately to the east. I've reached out to Lance and Gavin in regards to the drainage, and we will continue to work with them as we come up with a solution for this addition to the garage. Mr. Turley will also be participating in kind of creating a solution down that entire side of the alley.
- Morical A drainage solution?
- Rottmann Yes.
- Morical Great.
- Rottmann It's also important to note and it was in the Staff Report that this variance will vacate two previous variances that were either for more lot coverage or smaller side yard setbacks than what we are proposing. I don't know if that needs to be an official part of the motion to eliminate those previous variances, but the owner is definitely interested in doing that as part of this. Another interesting fact is that once we remove the existing parking pad that's located along the alley right now, we're actually going to decrease the amount of impervious area on this lot, so while the lot coverage technically goes up, the impervious area is actually going down with this work. I do want to highlight that the home you know is a beautiful, well-kept home, and has gorgeous landscaping if any of you have been there and seen that. Mickey and Diana have spent a lot of time, effort, and money on this home and by no means would they do something to this home that they thought would diminish its value or the value of the homes for their neighbors. On record we have four letters of support for this project by their four immediate neighbors.
- Morical We received those letters. Thank you, Mr. Rottmann.
- Rottmann Okay, great. And then because we're getting closer to the alley even though a lot of structures on that alley are right up against the alley, we're still 13 feet off of that, but as part of our design we're bringing the roofline down making it a shorter garage. We're also adding details over the door and up in the gable to make it a much more attractive facade along the alley for those that use it, so in summary I hope you recognize the uniqueness of this home, this garage, and these homeowners, and would approve these variances, which not only benefit Mickey and Diana, but I also believe benefit their neighbors as well.
- Morical Thank you very much. Are there any questions for the petitioner's representative? Hearing none, are there any remonstrators here tonight? Seeing none, literally, may we have the Staff Report, please?

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- DeLong Thank you. Staff is supportive of the petition as filed. Certainly it's interesting to reference the prior history. In 2001 a variance was granted approving the lot to have a lot coverage of 54 percent. In 2013 a variance was granted again modifying that previous request. Actually the lot coverage moved to 42 percent at that point in time. Neither of those projects actually moved forward. Those particular projects included internal renovations as well as external additions and modifications. Certainly the interior renovations went forward. We have permit history on that, but the exterior renovations did not occur. With that said, certainly Staff is supportive of the request for the setbacks and the lot coverage. I certainly appreciate the acknowledgment of the lack of need for the prior variances. I don't know if Carol has anything in particular that needs to happen in the motion to formally rescind those, if that needs to happen. But again, Staff is recommending approval, and I'd be happy to answer any questions.
- Morical Thank you. So this is appropriate, the third time's the charm variance. Is that official? Okay, any questions for Staff? So Carol, does it make sense to include as part of the motion the, what do we want to call it, rescinding –
- Drake Rescind by the agreement of petitioner.
- Morical Okay, by the petitioner's representative's agreement. Any questions for Staff? If none, I would entertain a motion.
- Evinger I move that Docket 2016-26-DSV, design standards variance, to provide for the expansion of a garage to exceed the required lot coverage to 51 percent, to deviate from the required side yard setback, to deviate from the required aggregate side yard setback, and to deviate from the required rear yard setback, all as illustrated and submitted on the site plan in the RV, Residential Village Zoning District be approved based upon the findings of fact and as presented and in addition the previous variances be rescinded, as agreed to by petitioner.
- Morical Would you be amenable to adding a specific reference to the two variances in your motion, that is variance 2001-13-DSV, and 2013-06-DSV, as being rescinded?
- Evinger Yes.
- Morical Thank you. Is there a second for the amended motion?
- Wopshall I second.
- Morical All those in favor, please say aye.
- All Aye.
- Morical Any opposed? Motion carries.
- Rottmann Thank you very much.

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- Morical Thank you, Mr. Rottmann. And we have a couple of further actions to take. Carol?
- Drake These are on your Agenda as outstanding items. On PL Properties, I do not know the status of that right to farm document, and on Crenshaw, my understanding is it's a work in progress by the petitioner's counsel.
- Morical Thank you for that update. And we have some findings of fact to execute.
- Drake Yes.
- Morical Do we need to do those on the record?
- Drake You should have findings consistent with the items you approved this evening, except for the denial on Lyons.
- Morical Okay, thank you. I hereby adjourn this meeting of the Board of Zoning Appeals.