

September 20, 2021

The Hendricks County Board of Zoning Appeals convened in the Hendricks County Government Center, Meeting Rooms 4 and 5, Monday, September 20, 2021. The meeting began at 7:30 p.m. Members present included Rod Lasley, Anthony Hession, Walt O'Riley and Ron Kneeland. Also, present were Greg Steuerwald, County Attorney, Tim Dombrosky, Planning Director and Leslie Dardeen, Recording Secretary. Sam Himsel was absent.

Everyone stood and recited the Pledge of Allegiance.

Mr. Lasley read the Rules of Procedure for the Board of Zoning Appeals meeting.

He then asked for a motion to approve the minutes from the July 19, 2021 meeting.

Mr. Kneeland made a motion to approve the July 19th meeting minutes.

Mr. Hession seconded the motion.

Motion to approve the July 19, 2021 minutes passed unanimously.

**VOTE: For- 4                  Against- 0                  Abstained- 0                  APPROVED**  
**July 19, 2021 MEETING MINUTES**

Mr. Steuerwald presented the case.

**VAR 21-21: Paul & Jami Williams** Variance to reduce front setback to 0' to allow for new front porch on a .2-acre RB-zoned parcel in Town of Amo: Section 2, Township 14, Range 2W; Key No. 13-1-02-42W 100-001; located just south of intersection at Church St and Pearl St; 5103 Pearl St, Amo, IN 46103.

Mr. Dombrosky introduced the property on PowerPoint. It is in the small town of Amo and zoned RB. The comprehensive plan calls for the area to remain a small town with mixed uses. He explained that the placement of the house on the parcel was dictated by the original town plat. The front porch comes right to the front property line. It is non-conforming as it doesn't adhere to the County Ordinance's specifications for front setbacks; however, it is in line with other properties in the area and with small town allowances. Mr. Dombrosky then explained that the original porch has been demolished due to its poor condition and that the petitioner is wanting to replace it. He believes that the use is appropriate and all criteria for a variance have been met. Staff recommends approval.

Mr. Lasley asked if there were any question from the board.

Being none at this time, he invited the petitioner to address the board.

John Hile, 1544 Harrison Dr, Greenwood, IN 46143, representing Paul and Jami Williams addressed the board. He presented a PowerPoint showing the front of the home. The old porch is gone and only unsecured steps to the front door remain. Mr. Hile pointed out where the new porch/deck would go, stating that there would be 18' between it and the edge of the road.

Mr. Hession asked what the dimensions of the new deck would be.

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Mr. Hile responded that the deck would be 30' wide. He is not sure what the depth will be other than the deck will go to the property line, same as the original porch.

Mr. Lasley asked if the deck will take up the entire front of the house.

Mr. Hile answered that yes, the deck will be the same width as the house.

Mr. Lasley asked if there will be an access ramp.

Mr. Hile answered that there will not be at this time. It may be something the petitioner adds at a later time.

Mr. Lasley asked if there were any other questions from the board at this time.

There were none.

Mr. Lasley then opened and closed the public portion of the meeting as no one had signed up to speak.

Mr. Lasley asked if there were any final questions or comments from the board.

Being none, he asked for a motion.

Mr. Hession made a motion to approve VAR 21-21 with conditions set by staff.

Mr. O'Riley seconded the motion.

Motion for approval of VAR 21-21 carried unanimously.

**VOTE: For- 4            Against- 0            Abstained-0            APPROVED**  
**VAR 21-21: PAUL & JAMI WILLIAMS**

## **Hendricks County Area Board of Zoning Appeals**

Findings of Fact/Law and Conditions of Approval

VAR 21-21

An application for the above noted development standards variance was filed in the office of the Hendricks County Department of Planning and Building (DPB). The application sought to vary development standards by reducing the front setback to zero (0) feet in an RB/Residential zoning district.

In accordance with Indiana Code (IC) 5-3-1 and the Hendricks County Zoning Ordinance (HCZO) Section 12.6 (C), the DPB staff published a legal notice in the *Danville Republican*. This notice advertised the public hearing scheduled in conformity with IC 36-7-4-920. The public hearing included the above variance on its agenda.

In accordance with Section 3.07 (D)(2) of the Rules of Procedure of the Board, the applicant also sent courtesy notices to certain surrounding property owners of record and other interested persons. A copy of this courtesy notice and a list of those receiving them were made a part of the file for this variance.

The Board conducted the hearing as advertised and heard evidence and testimony on the above noted variance. Meeting in open session, the Board subsequently considered the above noted request and its relationship to the

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requirements of IC 36-7-4 and HCZO. A tape recording of this proceeding has been on file and available to the public in the DPB office since the date of the hearing.

In its deliberations, the Board weighed the evidence associated with the following requirements and made the following findings.

**IC 36-7-4-918.5 Variance from the development standards of the Zoning Ordinance. A Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. A Variance may be approved under this section only upon a determination in writing that:**

- (1) **The approval will not be injurious to the public health, safety, morals, and general welfare of the community.**

The Board finds that the proposal will meet this standard. The reduction in setback will not infringe on the right of way or sight visibility for motorists.

- (2) **The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner.**

The Board finds that the proposal will meet this standard. The property is located in a small town center where the structure type is common to the setting. The increased useable lot area encourages revitalization and property investment. This will result in protection of property values.

- (3) **The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.**

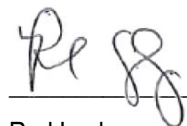
The Board finds that the proposal will meet the standard. The home was built with an elevated front door, requiring a code compliant landing and stairs. These cannot be constructed without a variance from the front setback. This constitutes a hardship.

**IC 36-7-4-918.2 Exceptions and uses. The Board may impose reasonable conditions as a part of its approval.**

1. The variance shall apply only to the construction described in the application.
2. All other federal, state and local regulations apply.

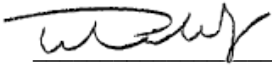
For all the foregoing reasons, the Board APPROVED this request for a development standards Variance on the 20<sup>th</sup> day of September 2021.

AREA BOARD OF ZONING APPEALS  
HENDRICKS COUNTY, INDIANA



Rod Lasley  
Chairperson

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Tim Dombrosky  
Secretary to the Board

**VAR 22-21: Gordon Potts** Variance to reduce flood protection grade by .10 ft on an 83.13-acre AGR-zoned parcel in Liberty Township: Section 32, Township 15, Range 1E; Key No. 07-1-32-51E 300-002; located ½ mile east of Cartersburg Rd on E US Hwy 40; 4398 E US Hwy 40, Plainfield, IN 46168.

Mr. Dombrosky introduced the property on PowerPoint. It is zoned AGR and is within a floodplain area. He explained that a permit was issued a few years ago for a barn that is currently being used for equipment storage. After the barn was built, it was determined by the DNR that it was .10' below the floodplain grade and a building permit should not have been issued. Due to the Hendricks County Planning and Building Department erroneously issuing the permit, the department is petitioning on behalf of the landowner for a variance to the floodplain grade. To rectify the issue any other way would be costly and require tearing down the building. Mr. Dombrosky also clarified that the building is not in the floodway, but rather the flood fringe.

Mr. Steuerwald explained that there has been a fairly recent change in law that allows some flexibility in cases like these. In full disclosure, he told the board that he was involved in making those changes to the state statute but did not vote on the changes.

Mr. Lasley opened and closed the public hearing as no one signed up to speak.

He then asked if the board had any questions or comments.

Hearing none, he asked for a motion.

Mr. Kneeland made a motion to approve VAR 22-21 with the conditions set by staff and referencing the state statute.

Mr. ORiley seconded the motion.

Motion for approval of VAR 22-21 carried unanimously.

**VOTE: For- 4          Against- 0          Abstained-0          APPROVED**  
**VAR 22-21: GORDON POTTS**

### **Hendricks County Area Board of Zoning Appeals**

Findings of Fact/Law and Conditions of Approval

VAR 22-21

An application for the above noted development standards variance was filed in the office of the Hendricks County Department of Planning and Building (DPB). That application sought to vary development standards to permit an

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accessory structure to deviate from the flood protection grade by a 0.10 foot in a AGR (Agricultural Residential) zoning district.

In accordance with Indiana Code (IC) 5-3-1 and the Hendricks County Zoning Ordinance (HCZO) Section 12.6 (C), the DPB staff published a legal notice in the *Danville Republican*. This notice advertised the public hearing scheduled in conformity with IC 36-7-4-920. The public hearing included the above variance on its agenda.

In accordance with Section 3.07 (D)(2) of the Rules of Procedure of the Board, the applicant also sent courtesy notices to certain surrounding property owners of record and other interested persons. A copy of this courtesy notice and a list of those receiving them were made a part of the file for this variance.

The Board conducted the hearing as advertised and heard evidence and testimony on the above noted variance. Meeting in open session, the Board subsequently considered the above noted request and its relationship to the requirements of IC 36-7-4 and HCZO. A tape recording of this proceeding has been on file and available to the public in the DPB office since the date of the hearing.

In its deliberations, the Board weighed the evidence associated with the following requirements and made the following findings.

**IC 36-7-4-918.5 Variance from the development standards of the Zoning Ordinance. A Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. A Variance may be approved under this section only upon a determination in writing that:**

- (4) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;**

The board finds that the proposal will meet this standard. The building has flood protection measures to ensure there is no impediment to the floodway and the public will not be injured.

- (5) The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner;**

The board finds that the proposal will meet this standard. The 0.1 change in elevation for the accessory building will have not have an effect on the use or value of adjacent property.

- (6) The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property;**

The board finds that the proposal will meet this standard. Requiring adherence to alternative compliance measures for the 0.1 foot difference in elevation will result in a hardship.

**HCZO 10.5.C. VARIANCE PROCEDURES. In passing upon such applications, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and;**

- (1) **The danger of life and property due to flooding or erosion damage;**
- (2) **The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.**
- (3) **The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;**
- (4) **The importance of the services provided by the proposed facility to the community;**
- (5) **The necessity of the facility to a waterfront location, where applicable;**
- (6) **The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;**
- (7) **The compatibility of the proposed use with existing and anticipated development;**
- (8) **The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;**
- (9) **The safety of access to the property in times of flood for ordinary and emergency vehicles;**
- (10) **The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site;**

**HCZO 10.5.D. CONDITIONS FOR VARIANCES. Variances shall only be issued when there is:**

- (1) **A showing of good and sufficient cause;**

The board finds that the proposal will meet this standard. The permit was issued to the owner by the County in error. The County has worked with the property owner to implement every possible and reasonable physical flood protection measure.

- (2) **A determination that failure to grant the variance would result in exceptional hardship; and,**

The board finds that the proposal will meet this standard. Alternative methods of compliance are exceptionally prohibitive and result in no benefit over flood protection measures being implemented along with this variance.

- (3) **A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.**

The board finds that the proposal will meet this standard. The existing structure has measures implemented to ensure no increase in flood heights or threats to public safety. Additionally, extraordinary public expense would be incurred in order to meet the flood protection grade as the County is responsible for the issuing of

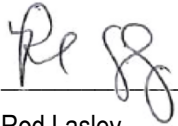
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the permit and resultant construction below the Flood Protection Grade. There is no cause for nuisance, fraud, victimization, or conflict.

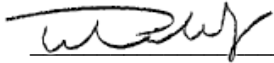
**IC 36-7-4-918.2 Exceptions and uses. The Board may impose reasonable conditions as a part of its approval.**

For all the foregoing reasons, the Board approved this request for a development standards variance on the 20<sup>th</sup> day of September 2021.

AREA BOARD OF ZONING APPEALS  
HENDRICKS COUNTY, INDIANA



Rod Lasley  
*Chairman*



Tim Dombrosky, AICP  
*Secretary to the Board*

**VAR 23-21: Ron & Deana Stutting and Terry Nelson** Variance to allow a 6-foot privacy fence in a side yard that extends beyond front plane of house to remain on a .79-acre AGR-zoned parcel in Lincoln Township: Section 16, Township 16, Range 1E; Key No. 08-2-16-61E 345-011; located in High Acres Subd. Sec. 3 Lot 27; 4287 High St, Brownsburg, IN 46112.

Mr. Dombrosky introduced the property on PowerPoint. It is zoned AGR within the High Acres subdivision. He explained that the petitioner had built a privacy fence along his south property line. It is 6' in height from 33' in front of house to the back of the property. There is a 4' section that then runs to within 10' of the front property line. Mr. Dombrosky further explained that the 4' section is allowable as long as it is at 50% opaque or less. The variance is for the 33' of fencing that extends in front of the house and is 6' in height, as well as for it to be solid. The ordinance does not allow fencing over 4' tall beyond the front plane of the façade of the house. However, the house is at a 50' setback, which is quite large. The ordinance would allow a setback of 25'. So, since the house is already so far back on the property and there are no safety concerns regarding the extra height of the fence and the three criteria have been met, he recommends approval of the variance.

Mr. O'Riley asked if the sight line for traffic was affected.

Mr. Dombrosky answered that there is no issue with the sight line. Since the property is not at a public intersection, the fence does not interfere with any restrictions.

Mr. Hession asked how long the fence has been there.

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Mr. Dombrosky responded that it's a fairly recent addition but is not sure how long it's been up.

Mr. Lasley asked if there were any further questions from the board.

There were none.

Mr. Lasley then invited the petitioner to address the board.

Mr. Ron Stutting, 4287 High St, Brownsburg, IN 46112 addressed the board. He explained that there have been multiple issues with the neighbors to the west of his property, one resulting in a physical confrontation which has led to legal issues. He built the fence to help shield his children and property from any interaction or contact with the neighbors. He believes the fence is necessary to help ensure their safety.

Mr. Lasley asked why he lowered the front portion to 4'.

Mr. Stutting responded that he only ran the 6' fence as far as he had to in order to shield his driveway from the neighbor's line of vision. He also explained that shortly after moving into the home, the neighbor approached him and told him that the parking pad along his driveway was actually encroaching onto the neighbor's lot. This resulted in a confrontation. Mr. Stutting built the fence in part as an attempt to mark the property line and block the portion of the parking pad on the neighbor's property.

Mr. Lasley asked Mr. Dombrosky that should the board approve the fence, would the approval be for both the 6' portion and the 100% opaqueness of the 4' section.

Mr. Dombrosky responded that was correct unless the board sets different conditions.

Mr. Lasley opened the public hearing.

Mr. Chuck Hill, 4283 High St, Brownsburg, IN 46112, addressed the board. He is the next-door neighbor who has been involved in the confrontations with the petitioner. He believes the excessive height and opaqueness of the fence blocks his view of the neighborhood and street. He is concerned that if one fence is allowed to be built like this then there will be others to follow. And he is also concerned that his property will be devalued.

Mr. Hession asked how the petitioner's parking spot ended up being on Mr. Hill's property.

Mr. Hill explained that the previous owner of Mr. Stutting's home also owned the vacant lot between the two houses. It was that owner who built the parking area across the property line. Mr. Hill eventually bought the vacant lot.

Mr. Hill continued addressing the board with his concerns. He said that after speaking with Mr. Dombrosky about the variance process, he understood that all the people living within a certain radius of the petitioner were to be notified of the petition and hearing. He asserts that mailings were not sent out and that many neighbors had no idea of the hearing.

Mr. Dombrosky verified to the board that mailings had indeed been sent out and showed them the certified and dated receipts of mailings.

Mr. Lasley closed the public hearing as no one else had signed up to speak.



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Mr. O'Riley asked for clarification on what is allowed as far as fencing goes.

Mr. Dombrosky responded that anything in front of the house façade can be no more than 4' tall and 50% opaque per County Ordinance.

Mr. O'Riley asked how far in front of the house does the 6' tall fence go.

Mr. Dombrosky answered that it goes 33' in front of house.

Mr. Hession asked if the subdivision has active covenants.

Mr. Dombrosky responded that he is not sure and that the covenants are not of concern to the purpose of the BZA.

Mr. Steuerwald also added that if there should be current covenants, what the board decides would not change them.

Mr. Lasley asked if anyone had any thoughts or considerations.

Mr. O'Riley asked if it would be appropriate to have the petitioner remove the 4' fence and allow him to keep the 6' fence.

Mr. Dombrosky responded that the petitioner is allowed per the ordinance to have the 4' fence, only at 50% opacity.

Mr. O'Riley amended his suggestion to allow the 4' fence to remain at 50% opacity.

Mr. Hession agreed that it sounded reasonable to him.

Mr. Lasley then asked for a motion.

Mr. O'Riley made a motion to approve VAR 23-21 with the conditions set by staff and with added condition that the 4' section be reduced to 50% opacity.

Mr. Lasley asked for a second to the motion.

Mr. Hession seconded the motion.

Motion for approval of VAR 23-21 carried unanimously.

**VOTE: For- 4                  Against- 0                  Abstained-0**  
**VAR 23-21: RON & DEANA STUTTING AND TERRY NELSON**

**APPROVED**

## **Hendricks County Area Board of Zoning Appeals**

Findings of Fact/Law and Conditions of Approval

VAR 23-21

An application for the above noted development standards variance was filed in the office of the Hendricks County Department of Planning and Building (DPB). The application sought to vary development standards by allowing a six (6) foot tall 100% opaque fence in the front yard of an AGR/Agricultural Residential zoning district.

September 20, 2021

In accordance with Indiana Code (IC) 5-3-1 and the Hendricks County Zoning Ordinance (HCZO) Section 12.6 (C), the DPB staff published a legal notice in the *Danville Republican*. This notice advertised the public hearing scheduled in conformity with IC 36-7-4-920. The public hearing included the above variance on its agenda.

In accordance with Section 3.07 (D)(2) of the Rules of Procedure of the Board, the applicant also sent courtesy notices to certain surrounding property owners of record and other interested persons. A copy of this courtesy notice and a list of those receiving them were made a part of the file for this variance.

The Board conducted the hearing as advertised and heard evidence and testimony on the above noted variance. Meeting in open session, the Board subsequently considered the above noted request and its relationship to the requirements of IC 36-7-4 and HCZO. A tape recording of this proceeding has been on file and available to the public in the DPB office since the date of the hearing.

In its deliberations, the Board weighed the evidence associated with the following requirements and made the following findings.

**IC 36-7-4-918.5 Variance from the development standards of the Zoning Ordinance. A Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. A Variance may be approved under this section only upon a determination in writing that:**

- (7) The approval will not be injurious to the public health, safety, morals, and general welfare of the community.**

The Board finds that the proposal will meet this standard. The variance will not infringe on the right of way or sight visibility. The low-speed subdivision street has minimal traffic, the lot is on the outside of a curve in the roadway, and the fence is located well outside of the sight visibility triangle.

- (8) The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner.**

The Board finds that the proposal will meet this standard. The property is located in a subdivision with varied styles and placements of homes, fences, and landscaping. In this setting, a variation in setbacks will not result in adverse effects to value. The increased privacy and safety encourages revitalization and property investment. This will result in protection of property values.

- (9) The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.**

The Board finds that the proposal will meet the standard. The compliant height results in no added benefits but represents a disproportional disruption and inconvenience. This constitutes a hardship.

**IC 36-7-4-918.2 Exceptions and uses. The Board may impose reasonable conditions as a part of its approval.**

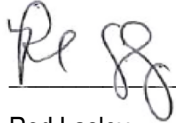
3. The six-foot privacy fence is permitted up to point described in the application, and the four-foot privacy fence must be made to comply with the ordinance restrictions on opacity.

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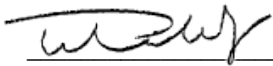
4. The variance shall apply only to the construction described in the application.
5. All other federal, state and local regulations apply.

For all the foregoing reasons, the Board APPROVED this request for a development standards Variance on the 20<sup>th</sup> day of September 2021.

AREA BOARD OF ZONING APPEALS  
HENDRICKS COUNTY, INDIANA



Rod Lasley  
*Chairperson*



Tim Dombrosky  
*Secretary to the Board*

Mr. Lasley asked if there was any further business.

Being none, the meeting was adjourned at 8:06 pm.