

**MINUTES**  
**DEKALB COUNTY BOARD OF ZONING APPEALS**  
**Monday November 14<sup>th</sup>, 2022**

A Meeting of the DeKalb County Board of Zoning Appeals was called to order at 6:03 p.m. in the Commissioner's Court of the DeKalb County Courthouse by Chairperson, Frank Pulver.

**ROLL CALL:**

Members present: Frank Pulver, Jason Carnahan, and Rory Walker

Members absent: Mary Diehl and Jeremy Watson

Staff Present: BZA Attorney, Andrew Kruse, Director/Zoning Administrator, Chris Gaumer, and Secretary, Andrea Noll

Public in Attendance: Lori Getts, Mitchell Getts, Shawn Mitchener, Tyler Secrist, and Ryan Marshall

**APPROVAL OF MINUTES:**

Motion was made by Frank Pulver and Seconded by Jason Carnahan to approve the Minutes of October 10<sup>th</sup>, 2022. None opposed. Motion carried.

**OLD BUSINESS:**

None.

**NEW BUSINESS:**

Petition #22-12 - Associated Farms, Inc. requesting a Development Standards Variance to allow a reduction to the lot frontage for a proposed division of land. The lot frontage proposed is 40' and the required lot frontage is 120'. The property is located on the east side of County Road 11A, approximately 100 feet south of the corner of County Road 11A and County Road 64, Garrett, Indiana and is zoned A2, Agricultural.

Chris Gaumer read the Staff Report and mentioned that, from his understanding, the property owner wishes to keep the remaining land as farm ground but sell off the remaining wooded tract to the back of the property. Then asked if there were any questions from the board members.

Frank Pulver asked for clarification on which land was included in the proposed lot.

Rory Walker asked for clarification on the county's culvert variances. He was concerned about the existing culvert, if there is one, and if the property owners will be able to be maintained in such a close proximity.

Chris responded that the minimum that him and Ben Parker have agreed to allow people to request variances for, is 40 feet and nothing less than that. This allows for a 30-foot-wide culvert and 5 feet on each side for maintenance.

Andrew Kruse questioned if there was more than 40 feet of road frontage on the map, because the lot looks like it slightly intercedes with the angled-road.

Frank Pulver clarified the 40-foot lot frontage proposed versus the 120-foot required lot frontage.

Lori Getts stepped forward and stated that she owned the property of the driveway just north of the lot being proposed. She voiced concern over the county's mailing process.

Chris Gaumer explained the difference between Certified Letters (requires a signature) and Certificate of Mailing Letters (signature not required).

Lori Getts also mentioned that first 30 feet, of the 40' from the dividing line, is owned by Frontier and cannot be developed because of a 30' X 30' underground platform from 1990. So, to the survey post, there's only 10 feet available of the recommended 120 feet.

Chris Gaumer made the board members aware of the bi-laws and procedure that his staff uses to determine which surrounding properties get notified of the petition and hearing.

Lori Getts presented a color-printed photo that was taken at the property, showing the survey sticks.

Tyler Secrist (realtor on behalf of petitioner) stepped forward to respond to the concerns of Lori Getts about the utility easement.

Frank Pulver clarified with Tyler Secrist, the location of the utility easement in approximation to the driveway and right-of-way.

Rory Walker opened up Google Earth Maps on his phone to verify with Tyler Secrist the location of the fence and utility boxes.

Chris Gaumer states that his staff's Beacon website does not have any recorded easement sites on the property. Also, he clarifies that his staff only has access to the easements that are specifically recorded on the Beacon website. If there is, in fact, an easement, the property owners would have to address it when they subdivide the property. If there is an easement that crosses the property, the telephone company (or owner of the easement) would be required to provide a letter to his office stating that the property owner(s) have permission to cross that easement.

Rory Walker asks Tyler Secrist where they would measure road frontage.

Tyler Secrist responds by stating that Anderson Surveying (the company who performed the survey of the property) and their staff make sure that there aren't any issues before they conduct their fieldwork. Tyler offers to provide a copy of the surveying paperwork via email to Chris Gaumer and informs the board members of the exact measurements of the proposed driveway to the lot that was approved by the DeKalb County Highway Dept.

Tyler Secrist clarifies to the public audience and to the board members that there is no malicious intent by himself or the petitioner, and reiterates the petitioner's proposed plan to create a buildable lot for the buyer who wants the property. He also states that the size of the proposed driveway is consistent with the size of the driveway on the neighboring property.

Audience member, Mitch Getts steps forward to present a letter in email format, from engineer Dan Cook who works for Frontier, which asked for a delay in creating a driveway on the easement because underneath the telephone boxes is buried fiber and a large grid of ground rods and stuff that cannot be disturbed. Mitch gets informs Chris that this email was supposedly also sent to the Building & Planning Dept right before the hearing, around 5:30 PM.

Chris Gaumer reads a letter of opposition from Bruce Getts (landowner to the north of the proposed lot) for the record. He addressed the mailing process for adjacent landowners changed about 5 years ago, which is why Bruce Getts was confused. Chris also explained that the zoning administrator prior to his employment, required a different re-zoning application and process from what Chris currently requires. He prefers to keep the properties zoned similarly throughout the county as a development standard, instead of "spot-zoning" different districts based on the property owners' preferences.

Chris Gaumer reminded the board that this is the 1<sup>st</sup> of 2 public hearings. The Plan Commission's Plat Committee will have to hold a public hearing after the Board of Zoning Appeals decision on this case for the subdivision approval and the property split to be buildable.

Frank Pulver verifies if Chris Gaumer had received an email from Frontier. He had not.

Andrew Kruse referenced the Conditions of Approval of this petition and suggested that since Frontier is a privately-owned company and is not considered a Federal or State agency, there could be some sort of written statement included as a Condition of Approval that the property owner(s) cannot interfere with any telephone boxes, fiber, or other equipment that Frontier owns, located on the proposed property.

Frank Pulver wanted to clarify the approximate location of the transformers and meters.

Tyler Secrist responded that the transformer and the electrical components are to the south of the approved DeKalb County Highway permit. He reiterated to the board members, that all he's asking for is a variance to accommodate the required 40' road frontage. They proposed a 12' drive to the north of the transformers and meters.

Rory Walker asked where in approximation the proposed driveway would be located to the fence.

Tyler Secrist approached Frank Pulver to physically point out exactly where the driveway would be on the map and reminded him that he can get them a copy of the survey performed by Anderson Surveying.

Jason Carnahan restated what Chris Gaumer had previously said about this hearing only being the first step; they will still have to perform a title search, which will clear up the question of a recorded easement or not and show up in the Plat Committee process. Jason said that they could include an additional condition, but that it would sort itself out in the Plat process. Chris Gaumer agreed.

Jason clarified that if there happens to be an unrecorded easement, it would turn into a battle between the property owner(s) and Frontier.

Jason Carnahan noted that he would approve the petition, adding the above stated condition.

Frank Pulver clarified that if the board neither approves nor denies petition # 22-12, they won't receive any more information than they already have now.

Chris Gaumer concluded that the only item they would have more information about, would be if there was a recorded easement or not.

Lori Getts stepped forward and re-stated the location of her driveway, property lines, and the Frontier boxes and culvert.

Chris Gaumer informs the board members that if they approve this petition, they would be approving a minimum of 40 feet, no less. Then, let Tyler Secrist do his research on the easement subject.

Frank Pulver clarifies with Chris Gaumer in which direction the property owner(s) would have to position the proposed driveway.

Frank asks if there were any questions from the board members or the public audience. There were none.

Frank Pulver closed the public hearing.

### **JURISDICTIONAL FINDINGS:**

*The petitioner has complied with the rules and regulations of the Board of Zoning Appeals in filing appropriate forms and reports.*

1. Application completed and filed on **October 3, 2022**.
2. Legal notice published in The Star on **November 4, 2022** with the publisher's affidavit and receipt received.
3. Certificate of mailing notices sent and receipts given to staff.
4. Letter from the County Board of Health, dated **October 24, 2022**.
5. Letter from the County Highway Department, dated **October 3, 2022**.
6. Letter from the Soil & Water Conservation District, dated **October 24, 2022**.
7. Letter from the County Surveyor or Drainage Board, dated **October 3, 2022**.
8. Letter from the DeKalb County Airport Authority, **not applicable**.

### **PROPOSED FINDINGS OF FACT:**

*These Findings of Fact proposed by staff are based off the knowledge and understanding of the proposed project. If any one of **your** answers is followed by an asterisk, under State Law (IC 36-7-4-918.5) and Section 9.09 G(3) of the DeKalb County Unified Development Ordinance you must deny the request.*

1. Will the approval of the variance request be injurious to the public health, safety, morals and general welfare of the community? Yes ( )\* No ( X )

*The proposed reduction in the lot frontage for the proposed 1 lot Minor Subdivision will not be injurious to the public. The petitioner is requesting enough width for the driveway that will not negatively impact the lot in the future and will be conserving agricultural farm ground. Also, see DeKalb County Board of Health letter, Highway Dept. letter & County Surveyor letter.*

2. Will the use and value of the area adjacent to the property included in the variance request be affected in a substantially adverse manner? Yes ( )\* No ( X )

*The proposed reduction in lot frontage will not impact the property values negatively.*

3. Will the strict application of the terms of the Unified Development Ordinance result in practical difficulties in the use of the property? Yes ( X ) No ( ) \*

*The proposed reduction in lot frontage is requested so the property owner can subdivide the property into a buildable lot. The Unified Development Ordinance requires 120 foot of lot frontage with a minimum lot acreage of 2 acres. The proposed lot would exceed the required lot acreage but not the required lot frontage. The proposed reduction in lot frontage will be conserving agricultural farm ground.*

#### **PLANNING STAFF RECOMMENDATIONS/COMMENTS:**

##### **Conditions of Approval:**

Staff is recommending approval for this Development Standard Variance and recommends the following conditions:

1. The Board retains continuing jurisdiction of this from Development Standards Variance to assure compliance with all terms and conditions and/or impose additional conditions deemed necessary for health and safety.
2. A Variance to allow this reduction in lot frontage to be 40' wide is approved.
3. Comply with any applicable Environmental Standards as required in Article 5, 5.11; EN-01, in the Unified Development Ordinance.
4. No offsite drainage crossing over said real estate should be obstructed by any development on this site.
5. No Certificate of Occupancy or Certificate of Completion shall be issued until the applicant files written evidence of compliance with any conditions of the DeKalb County Board of Health, DeKalb County Highway Dept., DeKalb County Drainage Board or DeKalb County Surveyor, DeKalb County Airport, DeKalb County Soil & Water Conservation, or other agency as applicable. And further, where applicable, file written evidence of compliance with Federal or State agencies where identified in the findings or conditions. The Zoning Administrator to determine when conditions have been met.
6. Through the Plat process, if there happens to be an actual recorded easement from Frontier, the driveway would have to be modified in accordance with that. That easement shall be protected if it is recorded in the records.

**Commitments of Approval:**

Staff is recommending approval. If the Board assigns commitments, they shall be given, signed and recorded with the DeKalb County Recorder's Office.

IT IS, THEREFORE, THE DECISION OF THE BOARD OF ZONING APPEALS THAT THIS VARIANCE FROM DEVELOPMENTAL STANDARDS, PETITION #22-12 IS HEREBY GRANTED APPROVAL ON THIS 14<sup>th</sup> DAY OF NOVEMBER, 2022.

Motion made by Jason Carnahan, Seconded by Rory Walker.

Vote tally: Yes: 3 No: 0

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Frank Pulver

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Rory Walker

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Jason Carnahan

Petition #22-13 - Shawn and Kimberly Mitchener requesting a Development Standards Variance to allow a reduction to the front yard setback for a porch addition. The proposed setback from the centerline of County Road 34 will be approximately 58 feet. The required setback is 80 feet. The property is located at 4505 County Road 34, Waterloo, Indiana and is zoned A1, Conservation Agricultural.

Chris Gaumer read the Staff Report, then informed the board members that there used to be a front porch on this house that was removed a number of years ago by the property owner. This action altered the setback footage of the existing house. So, the property owner wants to put that front porch back onto the house.

Chris explained the shape and location of the porch, in accordance to the existing steps on the house. The front wrap-around porch would enable access to the front door of the house in a safer way. Then Chris asked if there were any questions for him to address.

Frank Pulver asked the petitioner to approach the podium and asked him the age of the house.

Shawn Mitchener took to the podium to respond that the house was built in 1911 and has been in his family since 1960.

Frank asked the petitioner if the porch would be enclosed or open. Shawn replied that it would be open, just like the original porch had been.

Frank Pulver asked if there were any questions from the board members or audience. There were none.

Frank Pulver closed the public hearing.

**JURISDICTIONAL FINDINGS:**

*The petitioner has complied with the rules and regulations of the Board of Zoning Appeals in filing appropriate forms and reports.*

1. Application completed and filed on **October 26, 2022**.
2. Legal notice published in The Star on **November 4, 2022** with the publisher's affidavit and receipt received.
3. Certificate of mailing notices sent and receipts given to staff.
4. Letter from the County Board of Health, dated **November 1, 2022**.
5. Letter from the County Highway Department, dated **October 26, 2022**.

6. Letter from the Soil & Water Conservation District, dated **October 28, 2022**.
7. Letter from the County Surveyor or Drainage Board, dated **October 26, 2022**.
8. Letter from the DeKalb County Airport Authority, **not applicable**.

### **PROPOSED FINDINGS OF FACT:**

*These Findings of Fact proposed by staff are based off the knowledge and understanding of the proposed project. If any one of **your** answers is followed by an asterisk, under State Law (IC 36-7-4-918.5) and Section 9.09 G(3) of the DeKalb County Unified Development Ordinance you must deny the request.*

1. Will the approval of the variance request be injurious to the public health, safety, morals and general welfare of the community? Yes ( )\* No ( X )  
*The proposed reduction in the front yard setback not be injurious to the public. Also see DeKalb County Board of Health letter & Highway Dept. letter.*
2. Will the use and value of the area adjacent to the property included in the variance request be affected in a substantially adverse manner? Yes ( )\* No ( X )  
*The proposed reduction in the front yard setback not adversely affect the neighboring properties as the neighboring properties are agricultural and/or single-family homes.*
3. Will the strict application of the terms of the Unified Development Ordinance result in practical difficulties in the use of the property? Yes ( X ) No ( ) \*  
*The proposed reduction in the front yard setback is needed to allow for safe access to the home.*

### **PLANNING STAFF RECOMMENDATIONS/COMMENTS:**

#### **Conditions of Approval:**

Staff is recommending approval for this Development Standard Variance and recommends the following conditions:

1. The Board retains continuing jurisdiction of this from Development Standards Variance to assure compliance with all terms and conditions and/or impose additional conditions deemed necessary for health and safety.
2. A Variance to allow for a side yard setback of 59' 8" feet is approved.
3. Comply with any applicable Environmental Standards as required in Article 5, 5.11; EN-01, in the Unified Development Ordinance.
4. No offsite drainage crossing over said real estate should be obstructed by any development on this site.
5. No Certificate of Occupancy or Certificate of Completion shall be issued until the applicant files written evidence of compliance with any conditions of the DeKalb County Board of Health, DeKalb County Highway Dept., DeKalb County Drainage Board or DeKalb County Surveyor, DeKalb County Airport, DeKalb County Soil & Water Conservation, or other agency as applicable. And further, where applicable, file written evidence of compliance with Federal or State agencies where identified in the findings or conditions. The Zoning Administrator to determine when conditions have been met.

#### **Commitments of Approval:**

Staff is recommending approval. If the Board assigns commitments, they shall be given, signed and recorded with the DeKalb County Recorder's Office.

IT IS, THEREFORE, THE DECISION OF THE BOARD OF ZONING APPEALS THAT THIS VARIENCE FROM DEVELOPMENTAL STANDARDS, PETITION #22-13 IS HEREBY GRANTED APPROVAL ON THIS 14<sup>th</sup> DAY OF NOVEMBER, 2022.

Motion made by Rory Walker, Seconded by Jason Carnahan.

Vote tally: Yes: 3 No: 0

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Frank Pulver

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Rory Walker

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Jason Carnahan

There being no further business to come before the board, Frank Pulver adjourned the meeting at 7:04 p.m.

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Frank Pulver, Chairperson

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Andrea Noll, Secretary