

# Floyd County Board of Zoning Appeals

## Minutes

The regular meeting of the Floyd County Board of Zoning Appeals was held on **February 12, 2024 at 5PM** at the following address:

**Pineview Government Center Assembly Room 104  
2524 Corydon Pike  
New Albany, IN 47150**

### ROLL CALL

**Present:** Victor Unruh, Guy Heitkemper, Scott Whalen, Bill White

**Absent:** Larry Bibelhauser

**Other:** Kristi Fox, Nick Creevy, Gabbrielle Adams

### MINUTES

Minutes from January, 2024 regular BZA meeting

**Motion:** Approve

**Moved by:** Guy Heitkemper

**Seconded by:** Scott Whalen

**Motion passed.**

Mr. Unruh abstained from voting since he was not in attendance at the January meeting.

### NEW BUSINESS

**Agenda Item 1 – FC-01-24-02: Development Standards Variance** – Applicant is requesting variance to allow encroachment of the front yard setback of 60' for a front porch addition. Rick Hauber / H & H Home Improvement. 5796 Scottsville Road, Floyds Knobs, IN 47119 (Parcel 22-04-00-700-063.000-006). Section 07, Township 2 South, Range 6 East.

**Nick Creevy-** Director of Building & Development. Read the Staff Report: Applicant is requesting a Development Standards Variances to allow the encroachment of the front yard setback in order to construct a 12 x 26 foot gable roofed porch attached to a legal non-conforming structure. The existing home is setback approximately 45 feet from the roadway and about 35 feet from the Right of Way. Staff Comments: 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. The structure will be set back from the public roads to not inhibit site distance. Scottsville Road is relatively straight through the area with more than 500 feet of straight away in either direction from the home. 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. Other homes in the immediate area are similarly non-conforming with the front yard setback standards. Additionally, the improvement is expected to raise the property value and therefore have positive effects on neighboring values. 3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. The existing structure on the property is legal non-conforming regarding the front yard setback. Strict application would prevent any covered entrance from being built on the front of the building. 4. The

variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. There is not an airstrip in the vicinity. Staff Recommendations: None.

**Rick Hauber-** Applicant, H&H Home Improvement, 1120 North Taggart Ave., Clarksville, IN. He is representing the homeowners. The porch will be on step off the ground with a gabled roof. The roof will be open in the front with supports, will match the pitch of the existing roof. It will conform with the other structures in the area.

**Mr. Heitkemper-** asked if all the sides will be open and if this will be about 48' from the road.

**Mr. Hauber-** agreed to both questions.

**Mr. White-** asked if anyone would like to speak in favor. No one came forward. Asked if anyone would like to speak in opposition. No one came forward. Closed public comment.

**Mr. Whalen-** read the ballot. Docket FC-01-24-02. After careful review the Board finds that: 1. Approval of the variance WILL NOT be injurious to the public health, safety, morals and general welfare of the community because: The structure will be set back from the public roads to not inhibit site distance. Scottsville Road is relatively straight through the area with more than 500 feet of straight away in either direction from the home. 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 because: Other home in the immediate area are similarly non-conforming with the front yard setback standards. Additionally, the improvement is expected to raise the property value and therefore have positive effects on neighboring values. 3. The strict application of the terms of the zoning ordinance WILL result in practical difficulties in the use of the property because: The existing structure on the property is legal non-conforming regarding the front yard setback. Strict application would prevent any covered entrance from being built on the front of the building. 4. This variance DOES NOT involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. The Board of Zoning Appeals hereby GRANTS the Petitioner's Variance at the meeting held on the 12<sup>th</sup> day of February, 2024. No Conditions.

**Motion:** Approve

**Moved by:** Scott Whalen

**Seconded by:** Victor Unruh

**Motion passed.**

**Agenda Item 2 – FC-01-24-03: Development Standards Variance** – Applicant is requesting variance to allow access to property through a 15' wide easement instead of the 50' minimum easement requirement. James D. Marksbury. Vacant land between 869 & 925 Baylor-Wissman Road, Lanesville, IN 47136 (Parcel 22-02-00-400-060.000-002). Section 04, Township 3 South, Range 5 East.

**Mr. Creevy-** Read the Staff Report: Applicant is requesting a Development Standards Variances to the minimum frontage requirement of 100 feet on a public way or 50 feet and 100 feet across from a private access easement. The subject lot was created in 1991 as a non-conforming lot. The lot was created with a 10 foot wide strip of frontage to Baylor-Wissman Road. The property was conveyed to the current owner in 2005. Applicant initially intended to seek variance to allow drive utilizing 10 foot existing frontage on Baylor-Wissman Road. Upon staff review and additional discussion, an alternative route is proposed to utilize a proposed access easement through 8158 Corydon Ridge Road (owned by parents) and use the existing drive. The location of the drive on Baylor-Wissman would not allow sufficient site distance and would pose a hazard to the owners and the public. Staff Comments: 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. The drive location on Baylor-Wissman Road would pose a hazard to the owners and to the public due to a lack of site distance.

However, utilizing an existing drive at 8158 Corydon Ridge Road would not present a hazard as there is sufficient site distance. 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 use of neighboring properties on Baylor-Wissman will not be adversely affected by the variance. An additional drive on Baylor-Wissman could present additional hazards to traffic on that road which would impact neighboring properties. Access through an easement to Corydon Ridge is the safest route. 3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. The lot was not created compliant with existing code in 1991, without a variance the property would not be developable consistent with its zoning. 4. The variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. There is not an airstrip in the vicinity. Staff Recommendations: 1. Easement to provide access to Corydon Ridge Road. 2. Easement will be a minimum of 20' and provide for access and maintenance, to be approved by staff prior to building permit.

**Mr. Whalen-** asked Nick to explain how the property became non-compliant.

**Mr. Creevy-** the County has always had a 100' road frontage requirement. In 1991 when that was created, it was non-compliant but at that time, there would not have been a review if you are just deeding over property. The recorder's office will record things that are not compliant and until 30 years later, you try to build on it and it's not compliant. It was not the current owners that created it this way but that's how it is now.

**James Marksbury-** Applicant, 8158 Corydon Ridge Road. He covered it all pretty well. They have 2.5 acres that they would like to start building on. There is not enough of safe space to come out onto Baylor-Wissman. There is already an existing driveway to the backside of the property. It would just consist of sharing a common driveway.

**Mr. Heitkemper-** how close to the house is the existing driveway?

**Mr. Marksbury-** about 900 feet from the existing driveway to the new residence.

**Mr. Heitkemper-** will the easement be on the driveway or more towards the East? He is concerned about the close the driveway is to the house.

**Mr. Creevy-** there is an existing septic system to the east of the driveway which limits where a drive can be placed. That's why they can't get a 50' easement and needs to go smaller.

**Mr. White-** asked if anyone would like to speak in favor.

**Judy Marksbury-** owner of 8158 Corydon Ridge Road and the mother of the applicant. Her property is what will be used as access and has no issues with the request. This is the most logical way to access the property since Baylor Wissman is too dangerous.

**Mr. Heitkemper-** asked Nick about the easement and driveway. They can use the existing driveway but the easement be further over.

**Mr. Creevy-** we would want the drive in the easement and we will need a driveway maintenance agreement. We don't have the health department's plans of the system, we can recommend that they get it as far away from the building as possible and still be compliant with the Health Departments standards for distances off septic systems.

**Mr. Heitkemper-** if they did move the easement over, would they have to rebuild the driveway right away or could they use the existing driveway.

**Ms. Fox-** you are expecting them to submit to us a Use and Maintenance agreement for the existing driveway.

**Mr. Heitkemper-** just don't want to see a problem down the road, realizes this is the only fix for this property.

**Mr. White-** so you are saying to use the existing driveway but having the easement as a backup.

**Mr. Heitkemper-** right. 30-40 years things change. If someone else buys the property, the driveway is right up against the house.

**Mr. Creevy-** the establishment of the easement will be on record and any buyers will know if this easement is next to the house. And down the road, Baylor Wissman may get worked on. Things can change. Having the easement will protect both entities and new buyers will have that knowledge.

**Mr. White-** asked if anyone would like to speak in opposition. No one came forward. Closed public comment.

**Mr. Marksbury-** Down the line, we would like to use the west side of the property but it requires moving a propane tank and a few other things that will take time and money. This is a long term goal but for now this proposal gets us started.

**Mr. Whalen-** asked for clarification on when the easement will need to be recorded.

**Ms. Fox-** it will go to Staff for review first and then it will be recorded.

**Mr. Whalen-** Read the ballot: Docket FC-01-24-03, Petitioner James Marksbury. After careful review the Board finds that: 1. Approval of the variance WILL NOT be injurious to the public health, safety, morals and general welfare of the community because: The drive location on Baylor-Wissman Road would pose a hazard to the owners and to the public due to a lack of site distance. However, utilizing an existing drive at 8158 Corydon Ridge Road would not present a hazard as there is sufficient site distance. 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 because: The use of neighboring properties on Baylor-Wissman will not be adversely affected by the variance. An additional drive on Baylor-Wissman could present additional hazards to traffic on that road which would impact neighboring properties. Access through an easement to Corydon Ridge is the safest route. 3. The strict application of the terms of the zoning ordinance WILL result in practical difficulties in the use of the property because: The lot was not created compliant with existing code in 1991, without a variance the property would be developable consistent with its zoning. 4. This variance DOES NOT involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. The Board of Zoning Appeals hereby GRANTS the Petitioner's Variance at the meeting held on the 12<sup>th</sup> day of February, 2024. Approval by the Board is subject to the completion of the following conditions: 1. Easement to provide access to Corydon Ridge Road. 2. Easement will be a minimum of 20' and provide for access and maintenance, to be approved by staff prior to building permit. 3. Easement to be recorded.

**Motion:** Approve with Conditions

**Moved by:** Scott Whalen

**Seconded by:** Guy Heitkemper

**Motion passed.**

**DISCUSSION:**

2023 Annual Report

**Mr. Creevy-** gave the board an update on the number of permits issued, inspections and public hearing items that we did in 2023.

**Mr. Unruh-** asked how many inspectors made up the 1,899 inspections.

**Mr. Creevy-** we have two inspectors and one does mostly residential and one does mostly commercial. Majority of these were done by one person.

**Motion:** Adjourn


**Moved by:** Guy Heitkemper

**Seconded by:** none

**Motion passed unanimously.**

Adopted this 11<sup>th</sup> day of March, 2024.

  
Chairperson

  
Attest