

WHITLEY COUNTY BOARD OF ZONING APPEALS

STAFF REPORT

20-W-VAR-2 DEVELOPMENT STANDARDS VARIANCE

Myron Green

2760 E. Colony Avenue

MAY 26, 2020

AGENDA ITEM: 1

This petition was delayed due to COVID precautions. Updated notice has been provided.

**SUMMARY OF PROPOSAL**

Current zoning: LR, Lake Residential

Property area: 8,050± sq. ft.

The petitioner, owner of the subject property, is requesting a development standards variance for an encroachment into the required front (street side) and side setbacks on the property located at 2760 East Colony Avenue. The property is a part of Outlot 1 of the Beech Park Addition to Tri-Lakes Resort in Thorncreek Township.

The petitioner has constructed a 20'x24' lean-to on the north side (street-side) of the house. Per the submitted plot plan, the new construction is 10.4' from the street right-of-way line (roughly 15.5' from the edge of pavement) and 3.1' from the east property line.

Since this lot does not have lake frontage, front setback standards apply to the street side. The required minimum front setback is 35' and side setback is 5', necessitating a request for a 24.6' front variance and a 1.9' side variance.

This construction was completed prior to the issuance of a building permit. During zoning review, it was determined that the structure encroaches on a legal drain easement and on the required setback from a water well. Petitioner has secured a Consent for Permanent Structure from the Drainage Board and a Water Well Liability Release from the Health Department.

**REVIEW CRITERIA**

Indiana Code §36-7-4-918.5 and Section 10.10 of the Zoning Code state the criteria listed below upon which the Board must base its review. Staff's comments/proposed findings of fact under each criterion.

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

The proposed variances will not likely be injurious to the public health, morals, and general welfare as dwellings with encroachments such as the proposed exist throughout the zoning district without injurious effect.

However, the location of this property on a major through road does make this request different from most others in the LR district that are located on low-volume, low-speed local roads. The encroachment here could be injurious to the public safety and general welfare if it impacts travel on the public road.

It is unlikely that the side setback encroachment will be injurious since there is an access way to the east of the subject property.

**2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and**

It is not expected that this variance will adversely affect the value of the area adjacent to the property as similar properties in the LR district have similar structures with encroachments. However, use may be impacted if the nearness of the structure impacts the usability of Colony Avenue.

**3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction or restriction of economic gain.**

The strict application of the Ordinance terms may or may not result in practical difficulties. There is a legal drain tile to the south of the existing house that precludes the ability to construct any new structures to the south, which can mean that any new construction must be to the north. However, the need for a carport/lean-to is not a requirement of the code, so this could be viewed as a self-imposed condition.

The side setback is a function of the size of the structure. The 2019 Residential Building Code does have stipulations on the setback of structures from the property line, which this request encroaches into. Even if there are practical difficulties that arise from the zoning side setback, the building code requirements still apply to the construction.

Date report prepared: 3/17/20; updated 5/19/20.

**BOARD OF ZONING APPEALS ACTION**

Findings of Fact Criteria

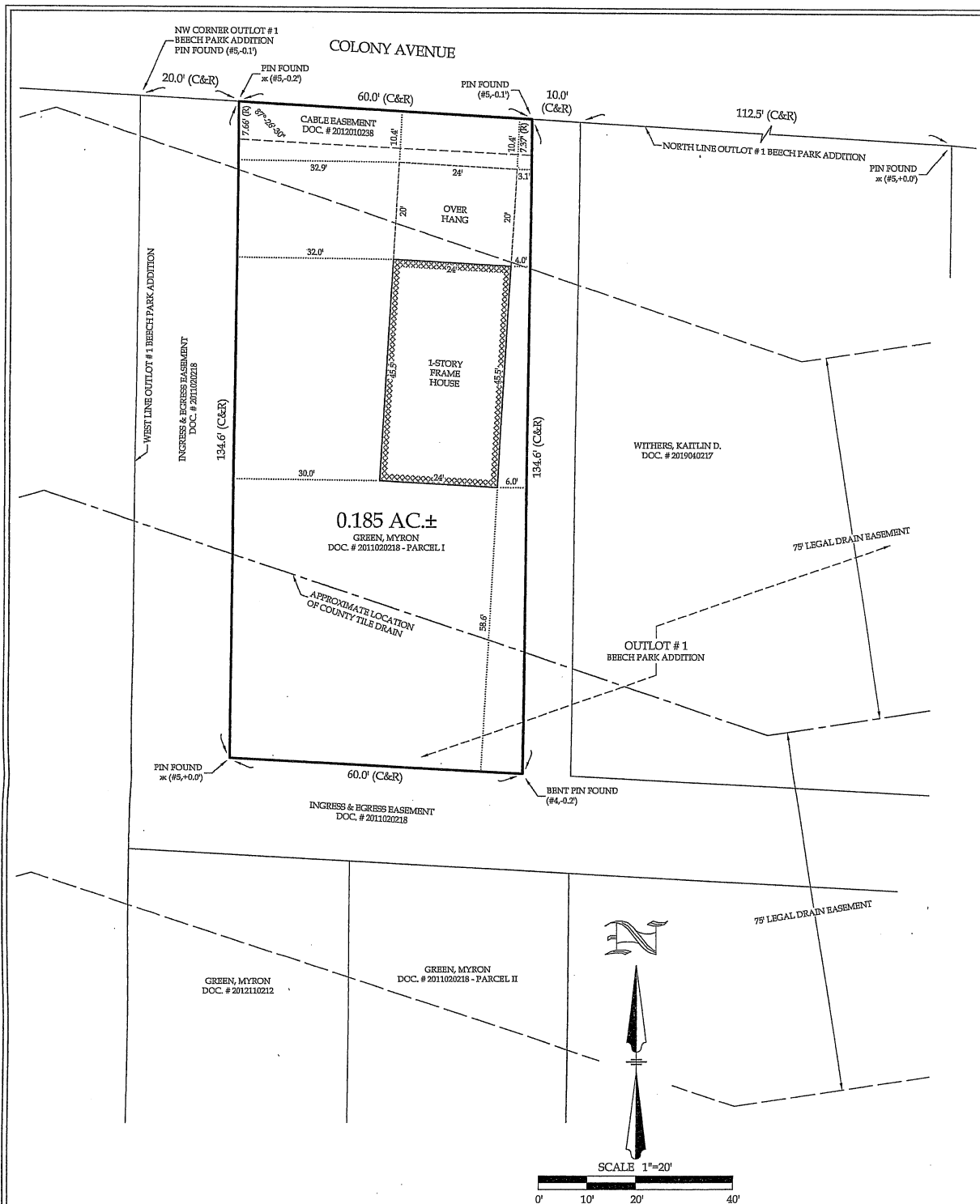
	<b>Vote: Denihan</b>		<b>Lopez</b>		<b>Wilkinson</b>		<b>Wolf</b>		<b>Wright</b>	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Criterion 1										
Criterion 2										
Criterion 3										

Motion:

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

By:

Second by:



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

FIELD WORK COMPLETED ON 1-16-2020

**PROPERTY ADDRESS**

2760 E Colony Ave  
 Columbia City, IN 46725

**GPS NOTE**

Multiple GPS observations utilizing a WGS84 signal and a local coordinate grid were utilized this survey.

**CERTIFICATE OF SURVEY**

I, THE UNDERSIGNED REGISTERED LAND SURVEYOR LICENSED IN COMPLIANCE WITH THE LAWS OF THE STATE OF INDIANA, HEREBY CERTIFY THE HEREON PLAT TO CORRECTLY REPRESENT A SURVEY AS MADE UNDER MY DIRECTION AND THAT THIS SURVEY AND ACCOMPANYING REPORT HAS BEEN COMPLETED IN ACCORDANCE WITH TITLE 865-IAC 1-12 AND ALL OTHER AMENDMENTS THERETO.

*Kevin R. Michel*



**WALKER & ASSOCIATES**  
 112 WEST VAN BUREN STREET  
 COLUMBIA CITY, IN 46725  
 Phone: (260) 244-3640  
 Fax: (260) 244-4640

www.walkersurveying.net  
 E-mail: mail@walkersurveying.net

LAND SURVEYING, CIVIL ENGINEERING,  
 & LAND PLANNING

PART OF OUTLOT NUMBER 1 IN BEECH PARK ADDITION  
 TO TRI-LAKE RESORT, WHITLEY COUNTY, INDIANA

FOR:

GREEN, MYRON

SCALE: 1"=20'

DRAWN BY: KRM

DRAWING NUMBER

DATE: 1-17-2020

PAGE: 3 OF 3

RB-140 "U"

**COPY**

**WHITLEY COUNTY DRAINAGE BOARD**  
**ACTION ON CONSENT FOR PERMANENT STRUCTURES**

The following is a record of the action taken by the Whitley County Drainage Board on a petition to allow permanent structures to be constructed, installed and maintained over, under and/or within the statutory right-of-way of a regulated drain as permitted by IC 36-9-27-33(d).

Date of Board Meeting: **Tuesday, January 21, 2020**

Place of Board Meeting: Whitley County Government Center

Name of Applicant: **Myron Green**

Property Owner Name: **Myron Green**

Address of subject property: **2760 E. Colony Avenue, Columbia City, IN 46725**

Legal Description and Parcel Number of subject property: **PT OUTLOT 1, BEECH PARK ADD; 92-03-12-306-106.000-011**

Name and number of affected regulated drain: **STAPLES L 665-000B**

Location of portion of regulated drain subject to proposed consent: **Requesting to install a permanent carport addition to the back of home located a minimum distance of seventy (70) feet from the STAPLES L 665-000B county regulated drain. The structure was completed without Drainage Board approval. Petition also includes the existing home located twenty (20) feet from the tile and the gravel drive located seventy (70) feet from the tile.**

☐ Consent **denied** for the following reasons:

☒ Consent **granted** subject to the following terms and conditions:

1. This consent is limited to the portion of the drain easement described above.
2. This consent is limited to the permanent structure(s) described in the following table and such structure(s) shall be no closer to the drain than the minimum distance(s) described below (measured from the center of a tile drain and from the top edge of the nearest bank of an open drain):

Description of Permanent Structure(s)	Minimum Distance
Carport Addition	70'
Existing Home	20'
Existing Gravel Driveway	70'

3. Unless otherwise required by the conditions of this consent, the size and location of the approved structure(s) must not be materially different from that described in the application, any materials or drawings submitted with the application or any other information provided to the Board by the applicant.

4. This consent is subject to the condition that neither Whitley County, nor the Drainage Board, nor any of their officials or employees, shall be liable for any damages to the approved structures or improvements, including any damages caused by any repair, maintenance, or reconstruction work on the drain. The property/structure owner shall be responsible for the costs to restore any approved permanent structures removed by the Board in connection with the Board's reconstruction or maintenance of the drain.

5. The structure shall not interfere with or cause any obstruction to the drainage improvements.

6. Other conditions:

7. Placing (or keeping) the approved structure or improvement within the statutory right-of-way constitutes the agreement of each owner to the terms and condition contained herein. This consent shall run with the land and bind and inure all owners, as well as all future and successive owners. "Owner" refers to the current owner, as well as any successors in interest or assigns, of the approved structure.

8. Structure must be placed a minimum of four (4) feet under a tile and a minimum of six (6) feet under the natural bottom of any open drain.

9. ENGINEER must be notified 24 hours prior to installation at (260) 248-3107 and installation must occur during normal business hours.

WHITLEY COUNTY DRAINAGE BOARD by:

Richard J. Kyle  
Michael Schrader  
Thomas West

\_\_\_\_\_  
\_\_\_\_\_



PREVENT. PROMOTE. PROTECT.

Whitley County Health Department  
220 W. VanBuren Street, Ste. 111  
Columbia City, IN 46725  
Phone (260) 248-3121 - Fax (260) 248-3129

## Water Well Liability Release

Permit #: \_\_\_\_\_

The Permit for the well installation, or repair of such a system on the \_\_\_\_\_  
Myron Green property, located at 2760 East Colony Ave, 46725  
is issued even though the minimum standards and requirements of the **Whitley County Health Department**, and the **Indiana State Department of Health** could not be met. In issuing this Permit, it is agreed that all efforts to meet requirements have been exhausted.  
Myron Green, property owner shall assume all liability which may arise pertaining to disease, health nuisance or public nuisance, and neither **Whitley County, Indiana**, or agent(s) of the **Whitley County Health Department** assumes any liability in issuing this Permit.

The minimum requirements that were not met are as follows:

Carport to be closer than 10 feet to existing well.

Signed: \_\_\_\_\_

Owner, or agent of owner

\_\_\_\_\_  
Environmental Health Specialist

Date issued: 1-29-20

Subscribed and sworn to me, a Notary Public in and said for County and State,

this 29 day of January 2020.

Laura Ann Weigold

Notary Public

My Commission Expires 9-23-2023

