



AVON BOARD OF ZONING APPEALS **MEETING AGENDA**

MEETING DATE: July 15, 2021
TIME: 7:00 PM
PLACE: Council Chambers, **6570 E. US Hwy 36**

1. Call to order
2. Roll Call/ Determination of Quorum
3. Approval of Minutes: June 17, 2021
4. Request for Continuances or Agenda Modifications
5. Consideration of Resolution on Electronic Participation Policy
6. Old Business:

7. New Business (Public Hearings)

VAR 21-10 - Engelman

Petitioner requests the approval of a variance of development standards of Chapter 8, Table 8-3 (Residential Districts Bulk Matrix) of the Town of Avon Zoning Ordinance to exceed the 3:1 lot depth to width ratio. The property is located at the northeast corner of North County Road 625 E. and Juliet Drive is zoned R-2.

PETITIONER: Andy Kult, Comer Law Office

VAR 21-11 – 709 N. Avon Ave.

Petitioner requests the approval of a variance of development standards of Chapter 8, Table 8-3 (Residential Districts Bulk Matrix) of the Town of Avon Zoning Ordinance to exceed the 3:1 lot depth to width ratio. The property is located at 709 N. Avon Ave. and is zoned R-3.

PETITIONER: Andy Kult, Comer Law Office

Other Business: Signatures

Public Comments: (Public may comment on items NOT part of a public hearing)

Adjournment

Next Meeting: August 19, 2021 at 7:00 p.m.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of *Town of Avon*, should contact the *Town Administrative Offices* as soon as possible but no later than 48 hours before the scheduled event

**MINUTES
FOR THE JUNE 17, 2021
AVON BOARD OF ZONING APPEALS
REGULAR MEETING**

- I. Call to Order– 7:00 PM**
- II. Roll Call/Determination of a Quorum** – In attendance were: Anne Inman, Marci Taschler, Paul Guckenberger, Kathryn Ransburg and Marcus Turner, as was Town Planner Bill Peeples, Senior Planner Ian Loera, Administrative Assistant Suzanne Hardy and Town Attorney Mitchell Ray
- III. Election of Board Officers:** Ms. Taschler nominated Marcus Turner as the Board Chairman; Ms. Inman seconded. Mr. Turner was voted Chairman 5-0
- IV. Consideration of minutes** – Minutes May 20, 2021 were approved.
- V. Requests for Continuances and Other Agenda Modifications – None**
- VI. Public Comments - None**
- VII. Old Business - None**
- VIII. New Business –**
 - VAR 21-09 Reagan Logistics Park Trail** – Mr. Peeples presented the staff report. He noted that due there is an existing trail on the east side of Ronald Reagan Parkway and a ditch along the west side would be cumbersome and difficult to develop on this portion of the road. This trail would also not connect to other trails on the west side. Staff recommends approval with a condition that a crosswalk be constructed at the proposed intersection of Ronald Reagan Pkwy and Veterans Dr to allow safe access to the trail
 - Bryan Sheward, Kimley-horn presented the on behalf of the Petitioner. He provided a brief presentation
 - The Board had a brief discussion regarding the number and the dimension as well as safety concerns using the example, more signs equal more distractions.
 - The Public Hearing was opened at 7:25 pm for comments, with no comments the Public Hearing was closed at 7:26 pm.
 - Ms. Inman made a motion to approve **VAR 21-09** with the condition of the cross walk, Mr. Guckenberger seconded. The motion was approved 5-0.
- IX. Other Business – None**
- X. Adjournment – 7:33 PM.**

**NEXT BOARD OF ZONING APPEALS MEETING
July 15, 2021**

Marcus Turner– Chair

Suzanne Hardy – Assistant Secretary

Avon Board of Zoning Appeals

Resolution 2021 –

Electronic Participation Policy

Whereas, the Avon Board of Zoning Appeals’ (“BZA”) Rules and Procedures govern how the BZA conducts its meetings; and

Whereas, throughout the COVID-19 pandemic, the Indiana Governor’s Executive Orders afforded municipalities the ability to hold meetings and take final action using electronic participation; and

Whereas, the Governor’s Executive Order allowing electronic participation has been rescinded because the 122nd Indiana State Legislature passed House Enrolled Act 1437 which allows members to electronically participate in meetings; and

Whereas, House Enrolled Act 1437 allows members participating electronically to be considered present for purposes of establishing a quorum and for taking final action in most instances; and

Whereas, the BZA finds it is in the best interest of the BZA to amend its Rules and Procedures to add an electronic participation policy.

Therefore, it is resolved that the BZA hereby amends its Rules and Procedures to add an electronic participation policy and the new policy shall read as follows:

“Article IV. Official Action, Voting and Disqualifying

...

Section 6. Electronic Participation Policy

1. a. Subject to subsections 2 and 4, any member may participate in a meeting by any electronic means of communication that:

- i. allows all participating members of the BZA to simultaneously communicate with each other; and
 - ii. other than a meeting that is an executive session, allows the public to simultaneously attend and observe the meeting.
 - b. A member who participates by an electronic means of communication:
 - i. shall notify the Secretary of the BZA of the member's intent to participate electronically at least 72 hours before the meeting.
 - ii. shall be considered present for purposes of establishing a quorum; and
 - iii. may participate in final action only if the member can be seen and heard.
 - c. All votes taken during a meeting at which at least one member participates by an electronic means of communication must be taken by roll call vote.
2.
 - a. At least fifty percent of the members must be physically present at a meeting at which a member will participate using electronic communication. Not more than fifty percent of the members may participate by an electronic means of communication at that same meeting.
 - b. A member may not attend more than fifty percent of the meetings in a calendar year by electronic means of communication unless the member's electronic participation is due to:
 - i. military service;
 - ii. illness or other medical condition;
 - iii. death of a relative; or
 - iv. an emergency involving actual or threatened injury to persons or property.
 - c. A member cannot attend more than two consecutive meetings by electronic communication. A member must attend, in person, at least one meeting following electronic participation in two consecutive meetings unless the member's absence is due to:
 - i. military service;
 - ii. illness or other medical condition;
 - iii. death of a relative; or
 - iv. an emergency involving actual or threatened injury to persons or property.
3. Minutes and memoranda of a meeting at which any member participates by electronic means of communication must:

- a. identify each member who:
 - ii. was physically present at the meeting;
 - iii. participated in the meeting by electronic means of communication;
and
 - iv. was absent; and
 - b. identify the electronic means of communication by which:
 - i. members participated in the meeting; and
 - ii. members of the public attended and observed the meeting if the meeting was not an executive session.
4. No member may participate using electronic communication in a meeting at which the BZA may take final action to:
- a. adopt a budget;
 - b. reduce personnel;
 - c. initiate a referendum;
 - d. impose or increase a fee;
 - e. impose or increase a penalty;
 - f. exercise the power of eminent domain; or
 - g. establish, impose, raise or renew a tax.
5. If an emergency is declared by:
- a. the governor under Indiana Code § 10-14-3-12; or
 - b. the Avon Town Council president under Indiana Code § 10-14-3-29;

members are not required to be physically present for a meeting until the emergency is terminated. Members may participate in a meeting by any means of communication provided that:

- i. At least a quorum of the members participate in the meeting using electronic communication or in person.
- ii. The public may simultaneously attend and observe the meeting unless the meeting is an executive session.
- iii. The minutes or memoranda of the meeting must comply with subsection 3 of this resolution.

All votes taken during a meeting at which at least one member participates by an electronic means of communication must be taken by roll call vote.”

It is further resolved that this Resolution shall become effective upon adoption.

It is further resolved that all other provisions of the BZA Rules and Procedures not specifically amended by this Resolution shall remain in full force and effect.

Adopted _____, 2021

Avon BZA:

Marcus Turner, President

Anne Inman, Vice President

Paul Guckenberger, Member

Kathryn Ransburg, Member

Marci Taschler, Member

Attest:

Bill Peeples, Secretary

VAR 21-10 Engelman Depth to Width Ratio Variance

Planning & Building Department Staff Report

July 7, 2021

Board of Zoning Appeals, Public Hearing

Ian Loera, Senior Planner

- A. Petition Number: VAR 21-10 Engelman Depth to Width Ratio Variance
- B. Applicant: Samuel & Megan Engelman c/o Dale Kruse
- C. Location: The subject property is located in the northeast quadrant of the intersection of County Rd 625 E and Juliet Drive
- D. Parcel Size: The entire parcel is about 13.46 acres
- E. Land Use and Zoning: The property is zoned R-2 and is currently vacant.
- The surrounding properties to the east, south, and west are zoned residentially and are improved primarily with single family residences. The property to the north is Avon Gardens, a commercial use garden and wedding venue.
- The properties which abut the eastern- and western-most side lot lines of the subject property are outside of the Town limits.
- F. Action Requested: Grant a Variance of Development Standards from Table 8-3 of the Avon Zoning Ordinance to eliminate the requirement for platting of lots in an R-2 district with a maximum of 3:1 lot depth-to-width ratio.
- G. History A Minor Plat [MIP(P) 21-02] has been filed to subdivide the subject parcel into four separate lots for residential use. This petition includes a request to waive the sidewalks. This request is pending before the Plan Commission and scheduled for a July 26, 2021 hearing.
- H. Staff Comments: This is a request for a variance of development standards to allow the subdivision of this property into four lots, with the prospective fourth lot having a depth to width ratio of 6.77 to 1. The Ordinance allows for a maximum width to depth ratio of 3 to 1.
- The imposition of a depth to width ratio in a zoning ordinance typically has three objectives: (1) to eliminate long narrow lots; (2) minimize the platting of "flag lots"; and (3) minimize the number of lots along a stretch of road.

In this instance, the prospective subdivision of this property into four lots under MIP(P) 21-02 would create three lots along Juliet Drive that comply with the depth to width ratio, and a fourth "estate lot" that does not. In order to comply with the requirements of the zoning ordinance, this lot would need a width, measured at the required setback line, of approximately 225.43 feet. It is possible to "cannibalize" the three remaining prospective lots, reducing the width of each to 110.58 feet, and create a conforming lot on the fourth. This calls into question two issues: (1) does the strict application of the Ordinance achieve the intent of the Ordinance; and (2) is there a practical difficulty.

As previously mentioned, this regulation typically has three objectives: (1) to eliminate long narrow lots; (2) minimize the platting of "flag lots"; and (3) minimize the number of lots along a stretch of road. Strictly applying this provision of the Ordinance to this property (1) would encourage narrower lots than the petitioner is proposing, (2) would not eliminate any flag lots and (3) results in a subdivision with the same number of lots as originally proposed. The underlying intent of the depth to width ratio, therefore, would not be achieved by denying this variance.

Since it is possible, however, to subdivide this property in a manner consistent with the Ordinance, it is challenging to make a case that strictly applying the Ordinance creates a practical difficulty in subdividing this property. It is clear, however, that the petitioner would like to establish an estate lot on Lot 4 and construct a house much more remote from the right-of-way as it typically achieved. The Ordinance requires the measurement of the lot width at the regulatory setback line, which is 25 feet in this zoning district. If the setback line were established 25 feet from the point that the lot widens, then the proposed lot would meet the depth to width ratio. Staff believes that the location where the setback line is established could be considered a practical difficulty in creating these types of estate lots.

I. Statutory Findings for Variance of Development Standard:

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

Criterion 1: The approval will not be injurious to the public health, safety, morals, and general welfare of the community

Applicant asserts that approval of the variance request will

“result in a platted lot of relatively normal dimension with ample (100 feet) of frontage along a dedicated public thoroughfare,” “will not change the general existing character of the area,” and thus “will have very minimal effect with respect to the health, safety, morals and general welfare of the community”.

Staff agrees with this assertion.

Criterion 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.

Applicant asserts that “the properties to the east, west and south are residential, and the subject property will be residential in nature” and thus “approval [of this variance request] will have negligible effect on the adjoining parcels.”

Staff agrees with this assertion.

Criterion 3: The strict application of the terms of the Avon Zoning Ordinance will result in practical difficulties in the use of the property.

Applicant asserts that “Due to the unique configuration of the overall parcel, it is difficult to subdivide without the need for a variance.”

Staff is not convinced that the petitioner’s assertion in this instance is accurate. The proposed lot widths of Lots 1, 2, and 3 could be reduced while increasing the lot width of Lot 4 in order to meet the required lot depth-to-width ratio. Staff believes the intent of this ordinance provision is to minimize the development of very long, narrow lots and/or flag lots and *not* to prohibit the development of large estate lots such as this one. If an alternate setback is established for Lot 4, at a point where the lot widens, the proposed lot would meet the depth to width ratio.

Criterion 4: The variance requested is the minimum necessary

Applicant asserts that the request is the minimum necessary, as they “are not seeking additional variances related to setbacks, etc.” and are merely seeking the variance for lot depth to width ration in order to “develop the property in the most efficient and usable manner.”

Staff agrees with this assertion.

Criterion 5: The need for the variance is not caused by the owner, previous or present

Applicant asserts that the variance is not caused by the owner previous or present. Applicant states that "the need for the variance is based upon the fact that the overall parcel is part of a prior 'parent' parcel that included what are now platted lots along Juliet Drive... Result[ing] in the unique configuration of the overall parcel now owned by the petitioners."

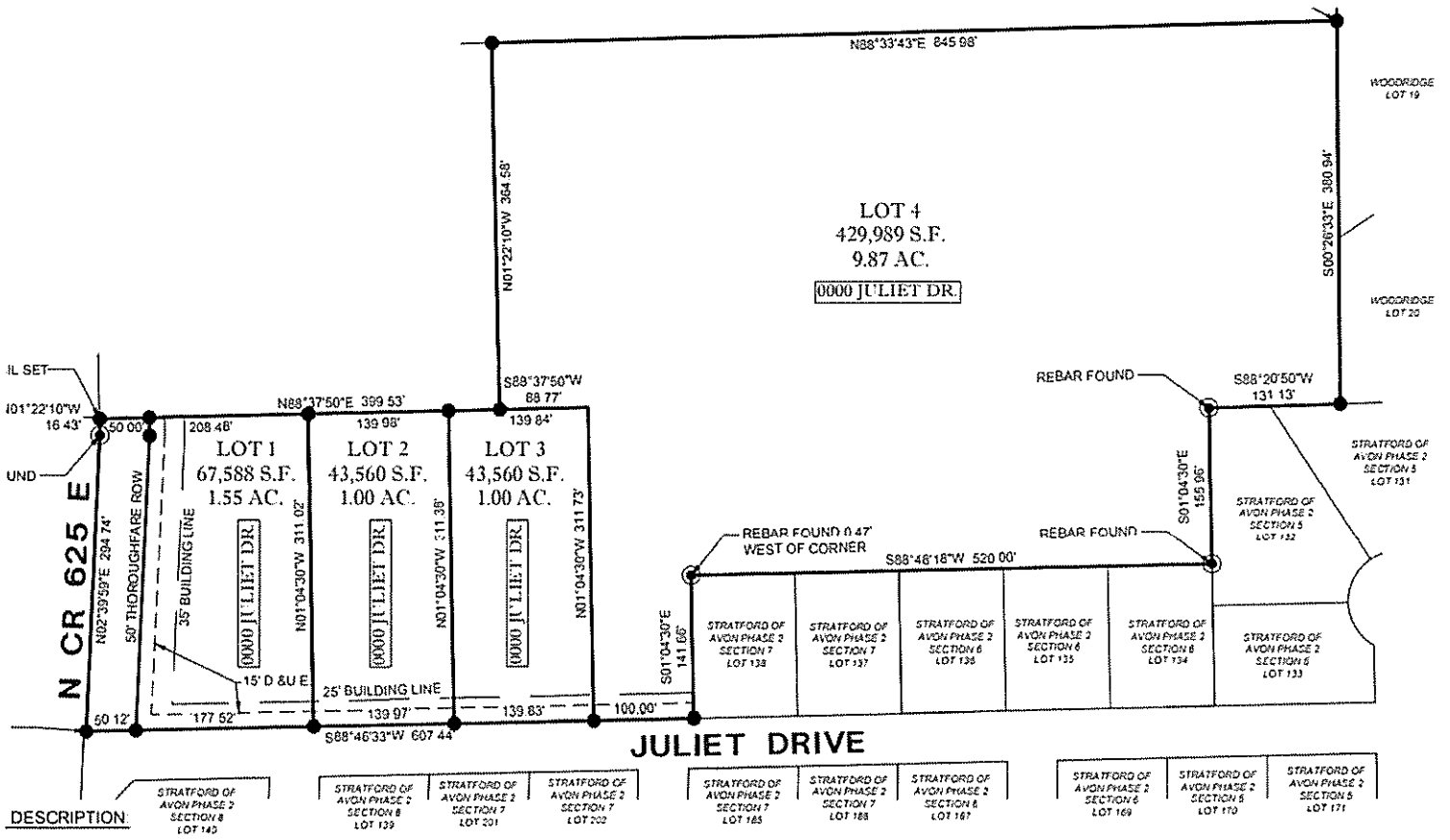
J. Recommendation:

Staff recommends approval of the VAR 21-10 to provide for the subdivision of this property with one lot in excess of the 3:1 lot depth-to-width ratio subject to the following condition:

1. Lot Four shall have a platted setback line of 165 feet from the right-of-way of Juliet Drive.

VAR 21-10 Engelman
Location Map





VAR 21-11 709 N Avon Ave

Planning & Building Department Staff Report

July 7, 2021

Board of Zoning Appeals, Public Hearing

Ian Loera, Senior Planner

- A. Petition Number: VAR 21-11 709 N Avon Ave
- B. Applicant: Steven L. Rode c/o Dale Kruse
- C. Location: The subject property is located one-quarter mile south of E 100 N, along the east side of Avon Avenue.
- D. Parcel Size: Combined acreage of both lots is .94 acres.
- E. Land Use and Zoning: The property is zoned R-3 and is currently improved with a single-family residence.
- The surrounding properties to the north, south, east, and west are zoned residentially and are primarily improved with single family residences.
- The properties which abut the north and west lot lines of the subject property are outside of the town limits.
- F. Action Requested: Grant a Variance of Development Standards from Table 8-3 of the Avon Zoning Ordinance to eliminate the requirement for platting of lots in an R-3 district with a maximum of 3:1 lot depth-to-width ratio.
- G. History Subject property was annexed into the town in 2014 per Ordinance 2014-01 as R-3 zoning designation.
- An administrative subdivision (MIP(A) 21-01) is pending before the Plan Commission seeking to combine these lots.
- H. Staff Comments: This is a request for a variance of development standards to provide the consolidation of two lots that would result in a lot with a depth to width ratio of 3.39 to 1 (maximum depth to width ratio is 3 to 1).
- Along Avon Avenue there is a column of approximately ten residential uses that consist of a platted lot in an older residential subdivision and an adjacent metes and bounds lot to the east. In this instance, the petitioner desires to construct a detached garage on the "unimproved" lot east of his residential lot, which would not be permitted, since no primary use is present on the adjoining lot. In determining the correct course of action to allow the construction of the

garage, the Staff felt that consolidating the lots through an administrative subdivision was the correct course of action. The petitioner filed the appropriate petition to accommodate this request; however, the staff discovered, as part of the review of the subdivision, that the proposed consolidation was inconsistent with the maximum depth to width ratio.

The rear (east) parcel currently does not have any frontage to a public street and was likely specifically created to provide additional space for the lot to the west. Per Section 13-1.4 *Street Frontage and Access* "Every lot must have frontage on a public street or permitted private access drive..." and per Section 13-1.4.C(a) "Private access drives shall provide access only to commercial and industrial lots." The eastern lot is currently nonconforming and approval of this variance would allow consolidation and bring the lot closer to compliance with the development standards of the underlying zoning district.

I. Statutory Findings for Variance of Development Standard:

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

Criterion 1: The approval will not be injurious to the public health, safety, morals, and general welfare of the community

Applicant asserts that "approval of the variance request will result in a platted lot of relatively normal size and dimension and will have a positive effect on public safety by eliminating extraneous potentially buildable lot with no road frontage."

Staff agrees with this assertion.

Criterion 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

Applicant asserts "Adjacent properties are similar to the subject property in that they include similar unplatted back lots," and the approval of this variance request will "have negligible effect on adjoining parcels."

Staff agrees with this assertion.

Criterion 3: The strict application of the terms of the Avon Zoning Ordinance will result in practical difficulties in the use of the property.

Applicant asserts that the “petitioner is unable to effectively utilize his residential property in a manner consistent with normal real estate ownership,” because the petitioner is “currently prevented from constructing an accessory outbuilding despite owning approximately one-half acre on which to do so” thus constituting a practical difficulty.

Staff agrees with this assertion. Due to the fact that the rear (east) parcel does not have a frontage along a public road, it is effectively undevelopable unless consolidated with the western property. As stated by the applicant, a pole barn would not be permitted on the rear (east) parcel as it stands.

Criterion 4: The variance requested is the minimum necessary.

Applicant asserts that the request is the minimum necessary, as “it is necessary to include all of the existing back parcel within the area to be included in the replat of Lot 8” “in order to avoid leaving any small unplatted and landlocked parcels... behind petitioner’s principal dwelling.”

Staff agrees with this assertion. Furthermore, this variance request is preferable to an alternative request of a *use* variance for the pole barn as a primary use on the existing parcel, as this variance of *development standards* would bring the lot further into compliance with the Specific Use Requirements for lots as mentioned in the staff comments of this staff report.

Criterion 5: The need for the variance is not caused by the owner, previous or present.

Petitioner asserts that “the need for the variance is based upon the fact that Bland’s Acres was platted in 1963, and Stonebridge subdivision Section 2 then platted in 1997, leaving undeveloped and land-locked parcels of real estate between the two platted developments.”

Staff agrees with this assertion.

J. Recommendation:

Staff recommends approval of the VAR 21-11 to eliminate the requirement for platting of lots in an R-3 district with a maximum of 3:1 lot depth-to-width ratio subject to no conditions.

VAR 21-11 709 N Avon Ave
Location Map

