



Avon Board of Zoning Appeals Meeting for **September 19, 2023** at **6:30 p.m.** at Avon
Town Hall

1. Start Of Meeting

- o Call to Order
- o Pledge of Allegiance
- o Roll Call
- o Determination of Quorum

2. Approval Of Minutes

2.1. None

3. Request For Continuances Or Agenda Modifications

4. Public Comment

The public may comment on items on the agenda that are not a public hearing or on a specific matter within the Council's jurisdiction.

5. Old Business

6. New Business (Public Hearings)

6.1. VAR 23-13 1581 S County Road 800 E Setback

Request for approval of a Variance of Development Standards to allow for the construction of a single-family residence (primary structure) behind an existing pool and accessory structure. The property is zoned R-2 and is located at 1581 E County Road 800 E.

Appellant - Irvin Fisher, Property Owner

Documents:

[VAR 23-13 STAFF REPORT.PDF](#)

7. Other Business

8. Adjournment

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.

"Avon is a safe, vibrant community for active families and thriving businesses."
Avon Town Hall | 6570 East US Highway 36 | Avon, IN 46123 | 317-272-0948 | avongov.org
| Next Meeting: **10/17/2023**



VAR 23-13 – 1581 S County Road 800 E Setback

Planning & Building Department Staff Report

September 12th, 2023

Board of Zoning Appeals, Public Hearing

Ian Loera, Senior Planner

A. PETITION NUMBER	<u>VAR 23-13 – 1581 S County Road 800 E Setback</u>
B. APPLICANT	Irvin Fisher, property owner
C. LOCATION	1581 S CR 800 E, Avon, IN 46123 32-10-13-300-004.000-031
D. PARCEL SIZE	1.78 acres
E. LAND USE & ZONING	The subject property is zoned R-2: Mixed Residential.
F. ACTION REQUESTED	Request for approval of a Variance of Development Standards to allow for the construction of a single-family residence (primary structure) behind an existing pool and accessory structure.
G. HISTORY	There is no relevant property history associated with the subject parcel.
H. STAFF COMMENTS	<p>This is a request for approval of a Variance of Development Standards to allow for the construction of a single-family residence (primary structure) behind an existing pool and accessory structure.</p> <p>Chapter 4.1(B) of the <i>Town of Avon Unified Development Ordinance</i> states, “Except as provided elsewhere in this Ordinance, all or part of an accessory use must be behind the rear building line of the principal building.”</p> <p>Chapter 5.1(C) of the <i>Town of Avon Unified Development Ordinance</i> states, “Accessory buildings for residential uses must be setback at least 10 feet behind the front facade of the</p>



principal building.”

Chapter 5.20(B) of the *Town of Avon Unified Development Ordinance* states, “Swimming pools or hot tubs cannot be in any required front, side, or rear yard or in front of the front building line of a principal use.”

The appellant seeks to construct a new single-family residence behind an existing pool and accessory buildings on the subject lot. This request comes as a result of the acquisition of a portion of the property by the Town through eminent domain for right-of-way as part of the Dan Jones Widening project. The property included within this acquisition included the existing home on the property, which is set to be demolished by the Town. The appellant is therefore left to construct a new home on the property. Because of this, staff finds there to be a practical difficulty associated with the variance request.

At the time of the publishing of this report, staff is still waiting on receipt of an official sealed survey for this property. Staff has been in contact with the appellant and expects to receive the survey prior to the meeting date. However, staff does not find the sealed survey to be necessary for the approval of this petition. A sealed site plan will be required at the building permit phase of the process, at which time further scrutiny will be applied.

A hand drawn site plan has been provided to staff for review. This site plan indicates a 96’ front setback for the proposed residence while the garage has a 52’ setback, the pool has a 64’ setback, and the shed has a 27’ setback. Staff does find that with a required 25’ setback in the R-2 zoning district, the appellant *does* have the ability to locate the proposed residence just forward of the front-most accessory structure. However, the Town has still created a practical difficulty in the property owner’s ability to construct their new home in a manner that would otherwise be consistent with the standards of the UDO, through the involuntary acquisition and demolition of his home, *and not his accessory structures*.

Staff finds no reason to believe that the request would affect the use and value of the area adjacent to the property in a substantially adverse manner nor would it pose a risk to public



	<p>health, safety, morals nor general welfare of the community.</p> <p>Staff does note that there is an existing pool that would be located in the front yard should this variance request be approved. However, this pool is enclosed by a 6' fence and a pool cover. Staff therefore finds that the location of the pool would not pose a risk to public safety.</p>
I. STATUTORY FINDINGS	<p>The Board of Zoning Appeals shall approve, conditionally approve or deny variances from the use standards of the Avon Zoning Ordinance. A variance may be approved under IC 36-7-4-918.5 only upon a determination in writing that:</p> <p><i>Appellant's responses are italicized. Staff's responses are in red.</i></p> <p>Criterion 1. Will the approval be injurious to the public health, safety, morals, and general welfare of the community?</p> <p><i>No, I am simply having a simple rectangular home built on my lot.</i></p> <p>Staff concurs with the appellants assertion on the matter. The location of the house behind the garage and pool poses no threat to the public health, safety, morals, or general welfare of the community. The pool area is enclosed by a 6' fence and covered so as to protect the public.</p> <p>Criterion 2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?</p> <p><i>No, if anything it should help since it will be a new home improvement.</i></p> <p>Staff strongly concurs with the appellant's assertion on the finding. The existing home was constructed in 1960 when no architectural standards were applied to buildings. The newly proposed home would be required to meet the current Town of Avon architectural standards and would therefore serve to increase value of the areas adjacent to the property.</p> <p>Criterion 3. Will the strict application of the terms of the Avon Zoning Ordinance constitute a practical difficulty if applied to</p>



the property for which the variance is sought?

Yes, my home was acquired by Avon for road improvements and I was left with my excess land that includes a garage and inground swimming pool. I am on a limited budget with SSI and I want to rebuild on the excess land I have left.

Staff concurs with the appellant’s assertion on the finding. The property owner’s home and property were involuntarily acquired by the Town through eminent domain to allow for the widening of Dan Jones Rd. The acquisition and demolition of the primary structure by the Town, while leaving the accessory structures, constitutes a practical difficulty in the property owner’s ability to reconstruct their home in the manner that would otherwise have been compliant had the Town not acquired *just* the primary structure while leaving the accessory structures.

Criterion 4. Is the variance requested the minimum necessary?

Yes, I believe I only need a variance for my home, because of its location to my garage and swimming pool.

Staff concurs with the appellant’s assertion on the finding. The appellant only seeks a variance for the location of the home, and has worked with the Town in remaining compliant with other standards such as building size, type, etc. despite having originally sought alternative construction that would not be compliant with the standards of the Town UDO.

Criterion 5. Is the need for the variance caused by the owner, previous or present?

No, the reason I need the variance is because the Town of Avon acquired my home leaving me with a situation where I have to build my replacement home behind the accessory structures.

Staff strongly concurs with the appellant’s assertion on the finding.

CONDITIONS

Per IC 36-7-4-918.5, the Board may impose reasonable conditions as a part of the Board’s approval.



J. RECOMMENDATION

Staff recommends **approval** of this petition subject to no conditions.



Exhibit A - Location Map

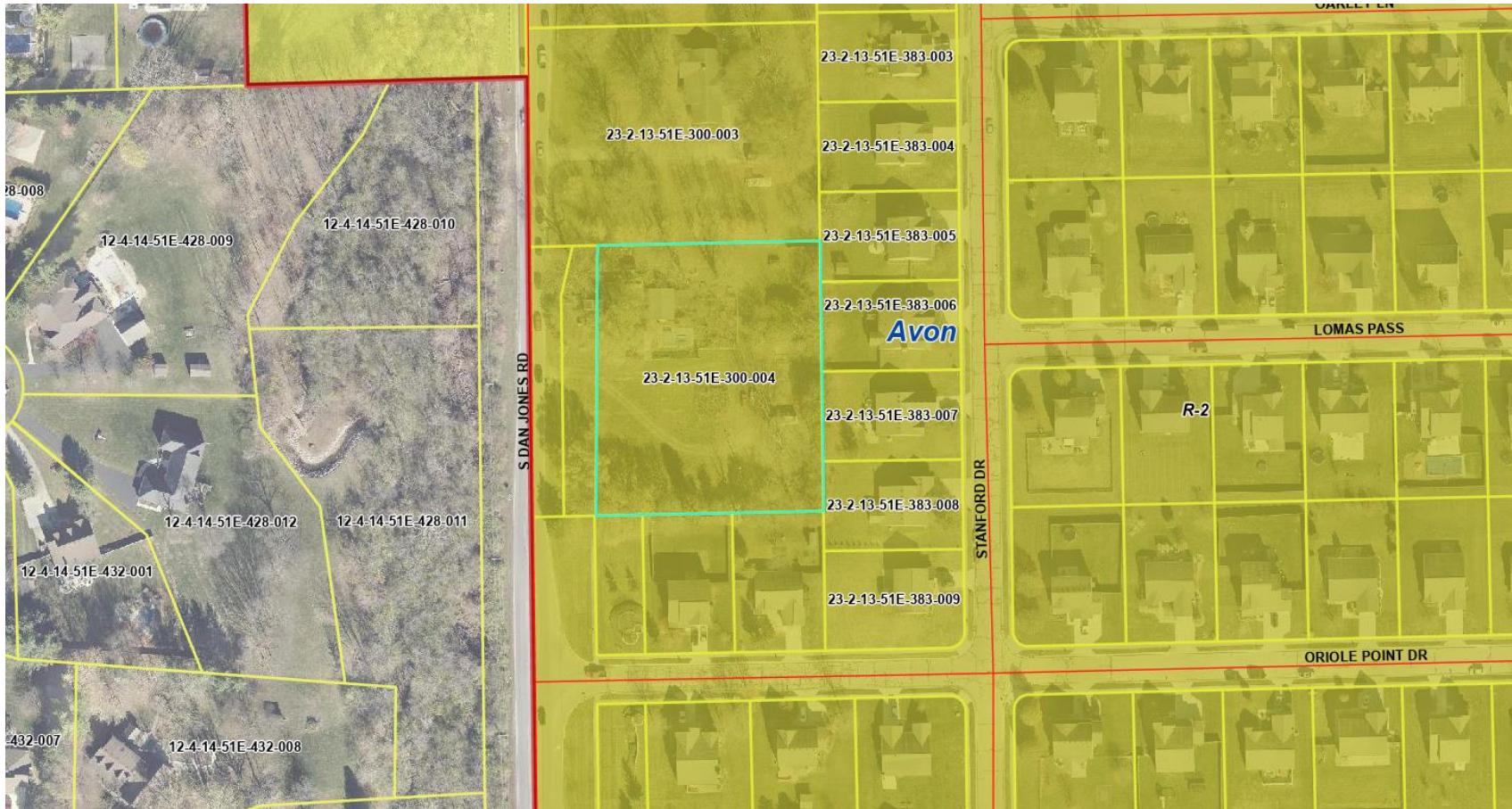




Exhibit B – Approximate Survey

EXHIBIT "B"
RIGHT-OF-WAY PARCEL PLAT
Prepared For Town of Avon, Indiana
by: AMERICAN
STRUCTUREPOINT
INC.

SHEET 1 OF 2

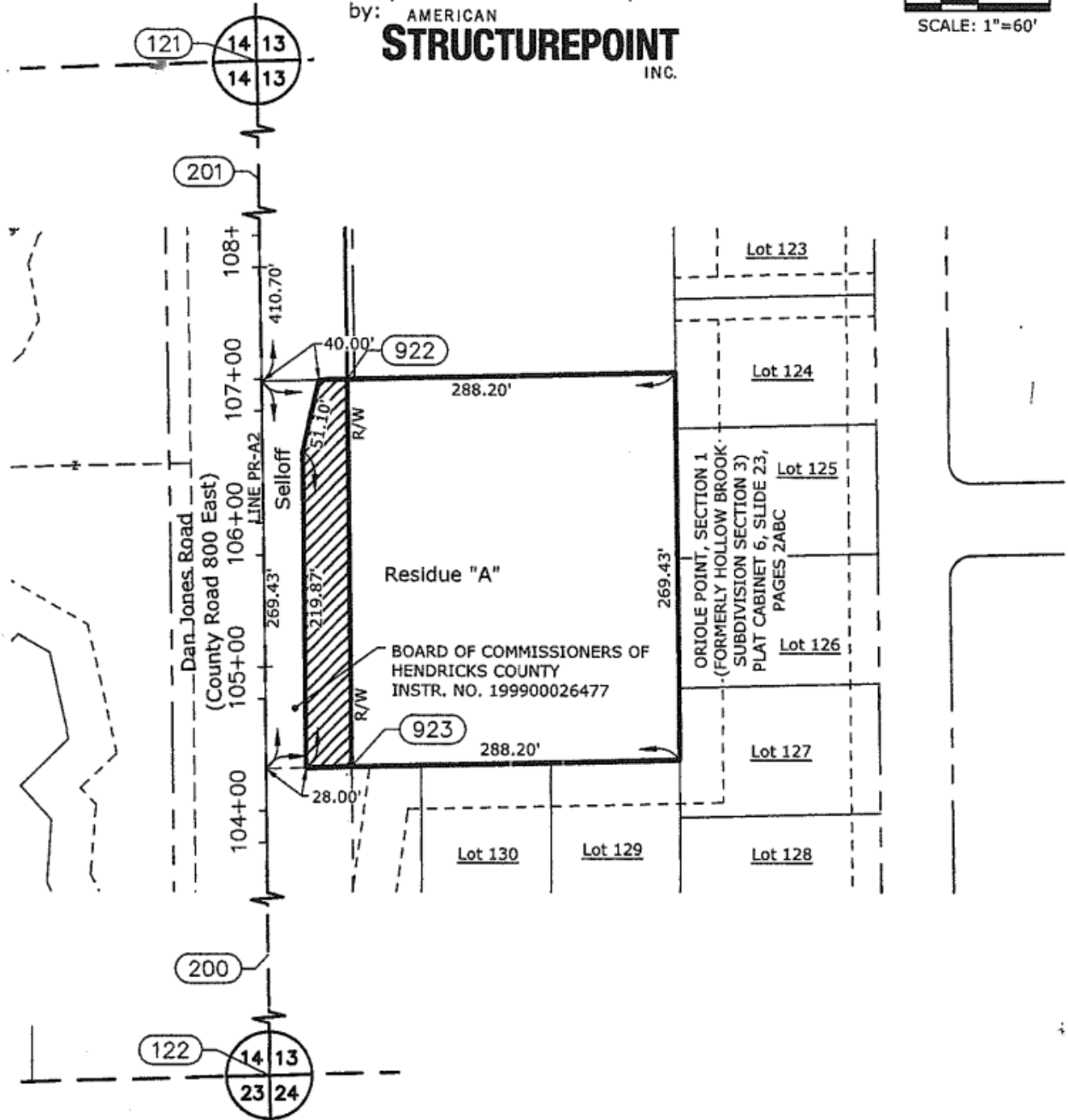
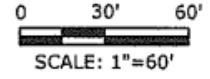




Exhibit C – Satellite Imagery

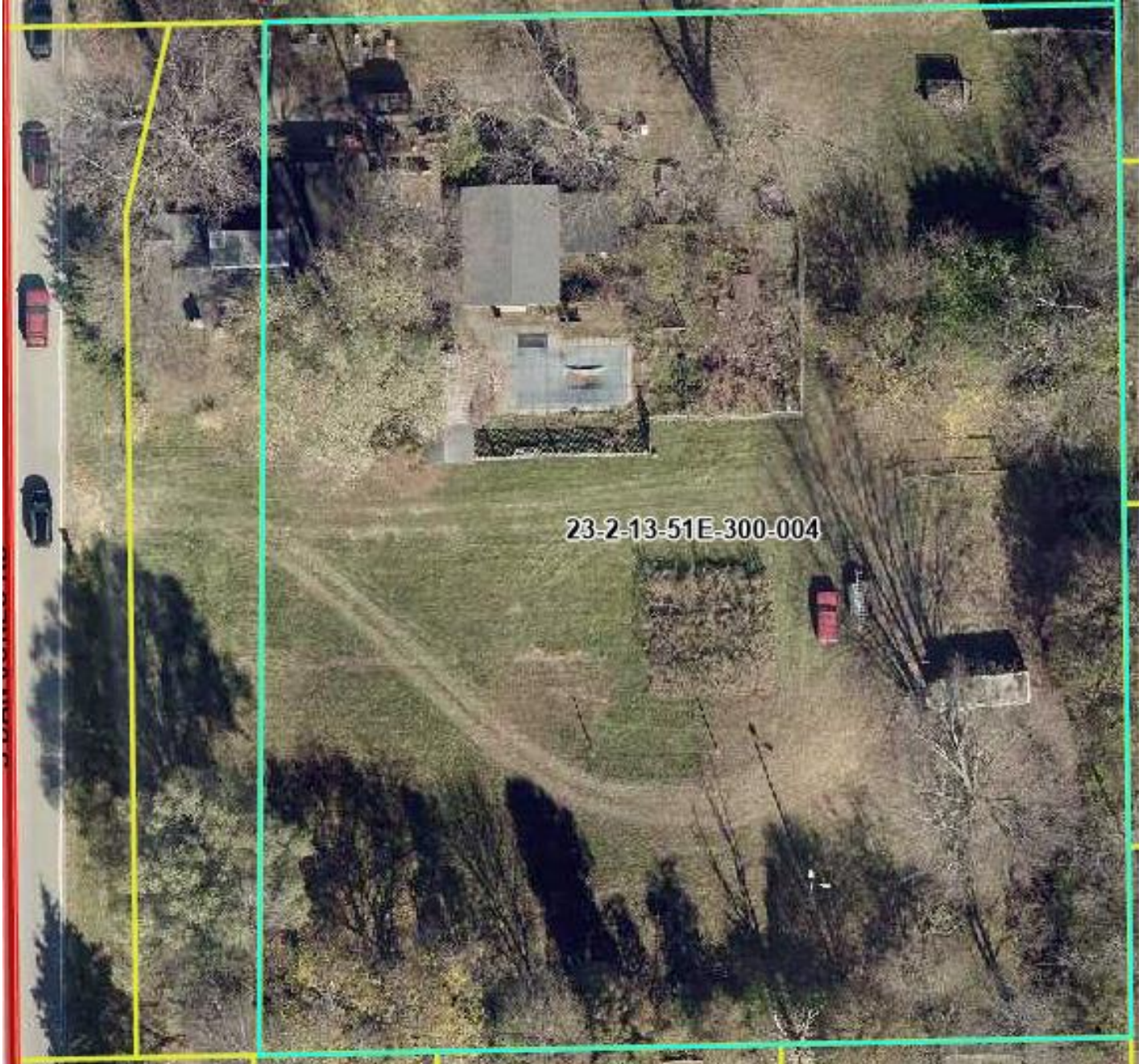




Exhibit D – Conceptual Site Plan

