

CITY OF SHELBYVILLE

Adam M. Rude
Director



Allan Henderson
Deputy Director

BOARD OF ZONING APPEALS

MEETING DATE: 10/11/2022

Case #:	BZA 2022-15: 306 Foxridge Court, DSV			
Petitioner's Name:	Daniel and Donna Kendal			
Owner's Name:	Daniel and Donna Kendal			
Petitioner's Representative:	N/A			
Address of Property:	306 Foxridge Court, Shelbyville, Indiana			
Subject Property Zoning Classification:	R 1, Single-family Residential			
Comprehensive Future Land use:	Single-family Residential			
	North	East	South	West
Surrounding Properties' Zoning Classifications:	R1 – Single-family Residential	No Zoning	R1 – Single-family Residential	R1 – Single-family Residential
Surrounding Properties' Comprehensive Future Land Use	Single-family Residential	Conservation	Conservation	Single-family Residential
History:	The property is a single-family residential home located in the Foxridge Subdivision. The subdivision started to build out in the early 1990's, but never fully built out. Recently Imperial Construction Services started building on two lots in the subdivision and five (5) additional lots have been purchased for single-family home construction including the subject property at 306 Foxridge Court.			
Vicinity Map:				
Action Requested:	Approval of one development standards variance, from UDO 5.57 Sidewalk Standards to not installed a required sidewalk when a new primary structure is constructed.			

1. In the R 1, Single-Family Residential zoning district, a sidewalk is required to be installed when a new primary structure is constructed or when a primary structure is enlarged by twenty (20) percent or greater. Sidewalks are also required to be installed in front of any lot created after the effective date of the Unified Development Ordinance once it has sat vacant for twenty-four (24) months (if a single lot was created), or twenty-four (24) months from the date the first certificate of occupancy was issued (if a multiple-lot subdivision) and where infrastructure exists.

Variance From UDO 5.57 Sidewalk Standards

Finding of Fact #1 – That the approval of the Development Standards Variance will not be injurious to the public health, safety, morals and general welfare of the community.

The applicant has provided the following response to Finding of Fact #1: "If there is no sidewalk, no maintenance would be needed like clearing snow off the walk."

The planning staff has determined that the requested development standards variance would not be injurious to the public health, safety, morals, and general welfare of the community. The requested variance is in keeping with the existing character of the neighborhood; when the subdivision was approved and started building in the early 1990's sidewalks were not required and thus not installed.

Finding #1 has been satisfied by the applicant

Finding of Fact #2 – That the use and value of the area adjacent to the subject property seeking a Development Standards Variance will not be affected in a substantially adverse manner.

The applicant has provided the following response to Finding of Fact #2: "No other property in the area has a sidewalk in front of the property."

The planning staff has determined that the requested variance should not have a substantially adverse effect on the adjacent area. As previously mentioned, none of the surrounding homes have sidewalks because when the subdivision was developed in the early 1990's sidewalks were not required. The entire subdivision was approved without including sidewalks.

Finding #2 has been satisfied by the applicant

Finding of Fact #3 – That the strict application of the terms of the ordinance will result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.

The applicant has provided the following response to Finding of Fact #3: "It would look out of place if our property was the only one that had a sidewalk and would interfere with utility hookups."

The planning staff has determined that the applicant has a practical difficulty that is neither self-imposed nor financial in nature. Because the subdivision was approved without the inclusion of sidewalks, utilities have been located in the front yard and right-of-way along the street where sidewalks would normally

be constructed. There is a practical difficulty in relocating the utilities that is not self-imposed by the current owner of the properties.

Finding #3 has been satisfied by the applicant

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS

1. The property owner agrees to install a sidewalk if or when an immediately adjacent property owner installs a sidewalk across the front of their property and this commitment shall be recorded against the property.

DEVELOPMENT STANDARDS VARIANCE: BZA 2022-15: 306 Foxridge Court, DSV

FINDINGS OF FACT BY THE SHELBYVILLE BOARD OF ZONING APPEALS

Staff Prepared

Motion:

(I) would like to make a motion to approve the requested development standard variance from UDO 5.57 to not install a sidewalk during the construction of the single-family residence at 306 Foxridge Court pursuant to the condition and the findings of fact presented in the planning staff's report.

- 1. The approval of the Development Standards Variance **will not** be injurious to the public health, safety, morals and general welfare of the community.
- The approval of the Development Standards Variance **will** be injurious to the public health, safety, morals and general welfare of the community.
- 2. The use and value of the area adjacent to the subject property seeking a Development Standards Variance **will not** be affected in a substantially adverse manner.
- The use and value of the area adjacent to the subject property seeking a Development Standards Variance **will** be affected in a substantially adverse manner.
- 3. The strict application of the terms of the ordinance **will** result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.
- The strict application of the terms of the ordinance **will not** result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.

Additional conditions imposed by the Board of Zoning Appeals:

- 1.
- 2.
- 3.

Shelbyville Board of Zoning Appeals

By: _____

Chairperson

Attest: _____

Secretary



DEVELOPMENT STANDARDS VARIANCE APPLICATION

Shelbyville Planning & Building Department
44 West Washington Street
Shelbyville, IN 46176
P: 317.392.5102

For Office Use Only:

Case #: BZA _____ - _____

Hearing Date: _____

Fees Paid: \$ _____

Final Decision:

Approved

Denied

1.

Applicant

Name: DANIEL AND DONNA KENDALL
Address: 911 HALE RD LOT 175
SHELBYVILLE, IND 46176
Phone Number: 317-825-0775
Fax Number: _____
Email: daniel.kendall1031@gmail.com

Property Owners Information (if different than Applicant)

Name: _____
Address: _____
Phone Number: _____
Fax Number: _____
Email: _____

2.

Applicant's Attorney/Representative

Name: _____
Address: _____
Phone Number: _____
Fax Number: _____
Email: _____

Project Engineer

Name: _____
Address: _____
Phone Number: _____
Fax Number: _____
Email: _____

3. Project Information:

General Location of Property (and address is applicable): 306 FOXRIDGE CT. SHELBYVILLE, IND 46176
Lot 15

Current Zoning Classification: RESIDENTIAL Existing Use: _____

Number of Requested Variances: 1 Proposed Use: _____

Section(s) of the Ordinance Requesting Variance(s) from; including Article, Section, Subsection, and Page Number: _____

4. Attachments

- Affidavit and Consent of Property Owner (if applicable)
- Proof of Ownership (copy of deed, recent property card)
- Letter of Intent
- Supporting Documents and Exhibits (Optional)
- Vicinity Map
- Findings of Fact
- Application Fee

The undersigned states the above information is true and correct as s/he is informed and believes.

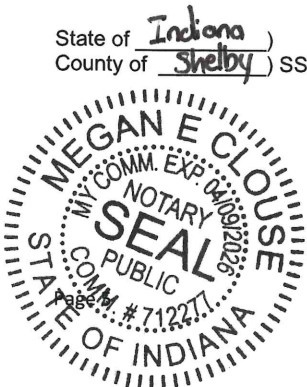
Applicant: Daniel B. Kendall Donna L. Kendall Date: 8/23/22

State of Indiana
County of Shelby SS:

Subscribed and sworn to before me this 23rd day of August, 2022.

Megan E. Clouse Notary Public Megan E. Clouse Printed

Residing in Shelby County. My Commission Expires: 4/9/2026



**AFFIDAVIT & CONSENT OF PROPERTY OWNER
APPLICATION TO THE SHELBYVILLE BOARD OF ZONING APPEALS**

State of Indiana)
County of Shelby) SS:

I, DANIEL & DONNA KENDALL, AFTER BEING DULY SWORN, DEPOSE AND SAY
(Name of property owner)

THE FOLLOWING:

1. That I am the owner of real estate located at 306 FOX RIDGE CT. SHELBYVILLE, IN 46176,
(Address of affected property)
2. That I have read and examined the Application made to the Shelbyville Board of Zoning Appeals by: _____
(Name of applicant)
3. That I have no objections to and consent to the request(s) described in the Application made to the Shelbyville Board of Zoning Appeals.

Owner's Name (Please print)

Owner's Signature

State of Indiana)
County of Shelby) SS:

Subscribed and sworn to before me this _____ day of _____, _____

Notary Public / _____
Printed

Residing in _____ County.

My Commission Expires: _____



LETTER OF INTENT
BOARD OF ZONING APPEALS

Please write a brief summary the case you are presenting to the Board of Zoning Appeals. You may submit on this form or on your own letterhead.

We do NOT NEED OR WANT A SIDEWALK IN
FRONT OF OUR HOUSE AT 306 FOXRIDGE CT.
SHELBYVILLE, TN, 46176. NO ONE ELSE IN
THE NEIGHBORHOOD HAS A SIDEWALK.
IT WOULD BE DIFFICULT TO HAVE A
SIDEWALK BECAUSE OF THE LOCATION OF
THE UTILITY HOOKUPS



DEVELOPMENT STANDARDS VARIANCE
FINDINGS OF FACT

Petitioner's Name: DANIEL AND DONNA KENDALL
Location: 306 FOX RIDGE CT. SHELBYSVILLE, IN. 46126
Variance for: NOT HAVING A SIDEWALK IN FRONT OF PROPERTY

The Shelbyville Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a Development Standard Variance. Using the lines provided, please explain how your request meets each of these criteria.

- 1. **General Welfare:** Explain why granting the request for a development standard variance will not be harmful to the public health, safety and general welfare of the City of Shelbyville.

IF THERE IS NO SIDEWALK NO MAINTANANCE
WOULD BE NEEDED LIKE CLEARING SNOW
OFF THE WALK

- 2. **Adjacent Property:** Explain why the development standard variance request will not affect the use and the value of adjacent properties.

NO OTHER PROPERTY IN THE AREA
HAS A SIDEWALK IN FRONT OF THE PROPERTY

- 3. **Practical Difficulty:** Please state the difficulties that will be faced if the project is not granted the requested development standard variance.

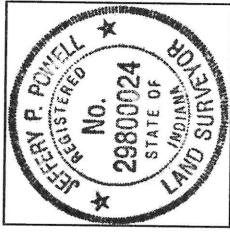
IT WOULD LOOK OUT OF PLACE IF OUR
PROPERTY WAS THE ONLY ONE THAT HAD A
SIDEWALK AND WOULD INTERFERE WITH
UTILITY HOOKUPS.

Note: For petitions with multiple requested variances, please submit one completed "Findings of Fact" for each requested variance.

Site Plan

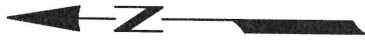
Daniel B & Donna L. Kendall
306 Foxridge Ct., Shelbyville IN, 46176
Lot 15 of the Foxridge Subdivision

I hereby certify that this Site Plan is true and accurate to the best of my knowledge as drawn by me.



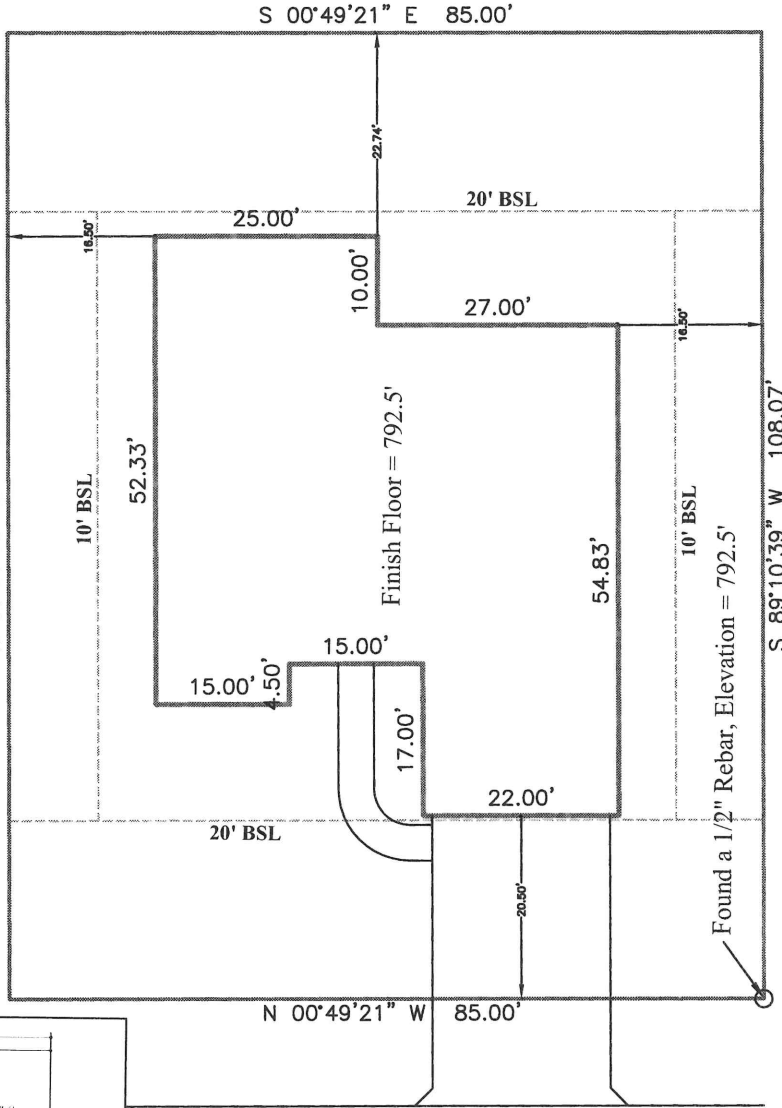
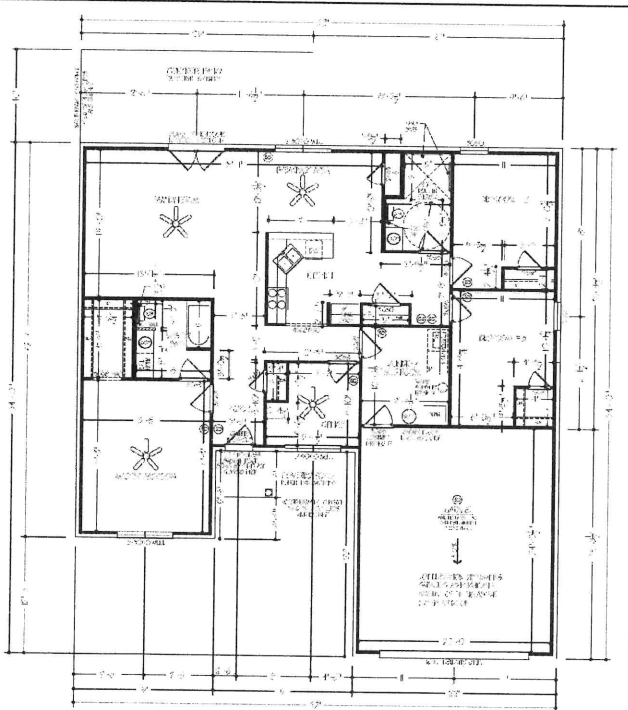
Jeffrey P. Powell

Jeffery P. Powell
Registered Land Surveyor
No. 29800024
Certified: March 22, 2022



Scale 1" = 20'

N 89°10'39" E 108.07'



Foxridge Ct.

Hocker Title
ALTA Universal ID:
6626 E 75th Street
Suite 410
Indianapolis, IN 46250

File No./Escrow No. : GE21-14424
 Print Date & Time: November 9, 2021 9:03 am
 Officer/Escrow Officer : Chad Garsnett
 Settlement Location : 6626 E 75th Street, Suite 410
 Indianapolis, IN 46250

Property Address: 306 Foxridge Ct (Lot 15)
 Shelbyville, IN 46176
 Buyer: Daniel B Kendall and Donna L Kendall
 911 Hale Road
 Lot 175
 Shelbyville, IN 46176
 Seller: CM Investment Trust
 306 Foxridge Ct (Lot 15)
 Shelbyville, IN 46176

Settlement Date: November 10, 2021
 Disbursement Date: November 10, 2021

Seller		Description	Buyer	
Debit	Credit		Debit	Credit
		Financial		
	30,000.00	Sale Price of Property	30,000.00	
		Deposit		500.00
		Prorations/Adjustments		
391.04		County Taxes 01/01/21 - 11/10/21		391.04
		Other Loan Charges		
		E-Recording Fee (B) to Simplifile	5.00	
		Title Charges and Escrow/Settlement Charges		
225.00		Closing Fee to Hocker Title		
25.00		CPL - Seller to First American Title Insurance Company		
		CPL-Buyer to First American Title Insurance Company	25.00	
25.00		Document Service Fee to Hocker Title	25.00	

Seller		Description	Buyer	
Debit	Credit		Debit	Credit
		Title Charges and Escrow/Settlement Charges (continued)		
150.00		Mobile Closing Fee to Hocker Title		
35.00		Municipal Lien Processing to Hocker Title		
	50.00	Prior File Search Adjustment to Hocker Title		
350.00		Search and Exam Fee to Hocker Title		
5.00		TIEFF Fee to First American Title Insurance Company		
		Wire Service Fee to Hocker Title	16.00	
150.00		Owner's Title Insurance to Hocker Title Coverage: 30,000.00 Premium: 150.00		
		Commissions		
1,800.00		Commission - Listing Agent to Steve Lew Real Estate		
		Government Recording and Transfer Charges		
		Recording Fees to Shelby County Recorder	25.00	
		Sales Disclosure to Shelby County Recorder	35.00	
		Transfer Fee to Shelby County Recorder	25.00	
		Miscellaneous		
228.00		Property Taxes Fall 20/21 to Shelby County Treasurer		
4.00		Utility to Shelbyville		
Seller			Buyer	
Debit	Credit		Debit	Credit
3,388.04	30,050.00	Subtotals	30,156.00	891.04
		Due from Buyer		29,264.96
26,661.96		Due to Seller		
30,050.00	30,050.00	Totals	30,156.00	30,156.00

Acknowledgement

We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/I authorize Hocker Title to cause the funds to be disbursed in accordance with this statement.

Buyer

Daniel B. Kendall

Daniel B Kendall

Donna L. Kendall

Donna L Kendall

Seller

CM Investment Trust

BY: Charles Marshall

Charles Marshall

Chad Garsnett

Key No.: 73-07-33-100-140.000-002

File No.: GE21-14424

WARRANTY DEED

THIS INDENTURE WITNESSETH, **CM Investment Trust**, ("Grantor"), of Shelby County, in the State of Indiana, CONVEYS AND WARRANTS to **Daniel B Kendall and Donna L Kendall, husband and wife, husband and wife**, ("Grantee"), of Shelby County, in the State of Indiana, for the sum of ten dollars (\$10), and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Shelby County, in the State of Indiana:

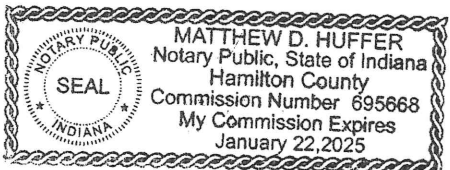
Lot 15 in the Final plat of Fox Ridge, Addison Township as recorded in plat Book 6, Page 118 in the Office of the recorder of Shelby County, Indiana.

Commonly known as: **306 Foxridge Ct, Shelbyville, IN 46176**

IN WITNESS WHEREOF, Grantor has executed this deed this 10th day of November, 2021.

CM Investment Trust

BY: Charles Marshall
Charles Marshall
Trustee



STATE OF INDIANA)
COUNTY OF Shelby)

Before me, a Notary Public in and for said County and State, personally appeared **Charles Marshall, Trustee of CM Investment Trust**, who acknowledged execution of the foregoing Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 10th day of November, 2021.

My Commission expires: 01-22-2025

Matthew D. Huffer
Notary Public

Residing in HAMILTON County

Grantee's Address and Tax Mailing Address: **911 Hale Road, Lot 175, Shelbyville, IN 46176**

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. (Janet Davis Hocker)

This instrument prepared by: Janet Davis Hocker, Attorney at Law, 6626 E. 75th Street, Suite 410, Indianapolis, IN 46250.

VENDOR'S AFFIDAVIT

STATE OF INDIANA)

FILE NO.: GE21-14424

COUNTY OF Shelby)

CM Investment Trust, being first duly sworn state that they (hereinafter referred to jointly and severally, as "Vendor") are this day conveying to **Daniel B Kendall and Donna L Kendall, husband and wife, husband and wife**, (hereinafter referred to, jointly and severally, as "Purchaser"), by Warranty Deed, the following described Real Estate in Shelby County, Indiana:

Lot 15 in the Final plat of Fox Ridge, Addison Township as recorded in plat Book 6, Page 118 in the Office of the recorder of Shelby County, Indiana.

more commonly known as: 306 Foxridge Ct (Lot 15), Shelbyville, IN 46176
("Hereafter referred to as "Real Estate")

In connection with the sale of the Real Estate, Vendor has furnished Purchaser with a commitment for an owner's policy of title insurance for the Real Estate under date of October 27, 2021, issued by Hocker Title, as an agent of First American Title Insurance Company as number GE21-14424-1.

Vendor has an indefeasible estate in fee simple in the Real Estate; and the Real Estate is free and clear of every kind or description of lien, lease or encumbrance except the following:

1. Easements, agreements and restrictions of record disclosed in said commitment.
2. Current taxes not delinquent.
3. Whatever matters affecting the Real Estate, if any, are disclosed in the above deed.

Vendor has not executed or permitted anyone in Vendor's behalf to execute any conveyance, mortgage, lien, lease, security agreement, financing statement or encumbrance of or upon the Real Estate or any fixtures attached thereto, except as stated above, which is now outstanding or enforceable against the Real Estate.

Vendor has made no contract to sell all or a portion of the Real Estate to any person other than the Purchaser, and Vendor has not given to any person an option to purchase all or any part of the Real Estate, which is enforceable or exercisable now or at any time in the future. There are no unpaid claims for labor done upon materials furnished for the Real Estate in respect of which liens have been or may be filed. The improvements upon the Real estate are all located entirely within the bounds of the Real Estate, and there are no encroachments thereon. There are no existing violations of zoning ordinances or other restrictions applicable to the Real Estate.

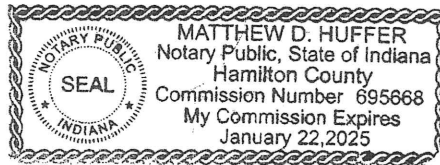
There is no judgment of any court of the State of Indiana or of any court of the United States that is or may become a lien on the Real Estate. No petition for bankruptcy has been filed by or against Vendor within the last six months, nor is any petition now pending with respect to Vendor for bankruptcy, insolvency or incompetence. Vendor is neither principal nor surety on any bond payable to the State of Indiana.

The Real Estate is now in possession of Vendor as Owner and no other person has a right to possession or claims possession of all or any part of the Real Estate. Vendor will deliver possession of Real Estate to Purchaser on or before closing, free and clear of any right or claim of any person to the possession of the Real Estate except NONE.

Vendor is not acting directly or indirectly, in any capacity whatsoever for any foreign country of national thereof, and Vendor is more than eighteen (18) years of age.

CM Investment Trust

BY: Charles Marshall
Charles Marshall



Subscribed and sworn to before me, a Notary Public in and for said County and State, this 10th day of November, 2021.

Matthew D. Huffer
Notary Public

This Instrument was prepared by: Janet Davis Hocker, Attorney at Law, 6626 E. 75th St. Suite 410, Indianapolis, Indiana 46250, (317) 578-1630