

**WHITLEY COUNTY BOARD OF ZONING APPEALS
STAFF REPORT**

21-W-VAR-21 DEVELOPMENT STANDARDS VARIANCE
Bryn & Isacc Keplinger
6976 E. Harrold Place

DECEMBER 28, 2021
AGENDA ITEM: 1

SUMMARY OF PROPOSAL

Current zoning: LR, Lake Residential
Property area: 5,400± sq. ft.

The petitioner, trustees of the owner's estate, is requesting a development standards variance for an encroachment into the required front setback on the property located at 6976 East Harrold Place in Smith Township. The property is unplatted but is adjacent to Lot 1 of Crabill's Addition to Blue Lake Resort (platted April 1945).

The petitioner has proposed to remove the existing dwelling, which had a significant fire in February 2021, and replace it with a new dwelling. The new dwelling would be a 40'x30' two-story structure, with a 10' wide porch on the north side. An existing failing retaining wall on the south side of the property would be reworked or removed.

The proposed front setback is 28'± from the north lot line; however, the petitioner's property extends to the lakeshore, with the Harrold Place right-of-way intervening between the shoreline and the dwelling. By policy, front setbacks are measured from the parcel line even in cases of common ownership. Disregarding that property line, the setback would be 50'± from the assumed right-of-way of Harrold Place, and about 160' from the lake property line.

The remaining setbacks are 5' and 9' on the sides, and 40' on the rear, all of which would be compliant with the current code. Also note that this property was granted a side setback variance (98-W-VAR-24) of 5.5' in lieu of the then-required 10'. That variance is now moot as the zoning code permits a 5' side setback by-right.

Since this lot has lake frontage, front setback standards apply to the lake side, with rear setbacks on the opposite, typically road, side. The averaging rule permissible in §5.03(D) does not result in any change in the setback. The required minimum front setback is 35', resulting in a 7' variance being requested.

Based on the Best Available map information and topography, the structure would be located outside the regulatory floodplain.

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 variance will not likely be injurious to the public safety, health, and morals as the proposed setback exceeds the code minimum when measured from either the road or lakeshore. General welfare may be injured if practical difficulties specific to the property are not found.

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 use or value of the area adjacent to the property as the surrounding properties enjoy similar front setbacks as the proposed.

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 results in practical difficulties. As setbacks are measured from property lines, even when in common ownership, the proposed dwelling would be placed farther south than the surrounding dwellings that enjoy similar, but compliant or legal nonconforming, setbacks. While the averaging rule can be used to account for such situations, in this case, an outlying setback skews the average so that it does not provide relief. Additionally, the bluff on the south side of the lot prevents shifting the dwelling southward without the need for reconstructing a failing retaining wall.

Combining the petitioner's parcels into one parcel could resolve the situation by removing the middle property line, but doing so might cause issues with property title, property boundaries, etc.

Date report prepared: 12/20/21

BOARD OF ZONING APPEALS ACTION

Findings of Fact Criteria

	Vote: Denihan		Lopez		Wilkinson		Wolf		Wright	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Criterion 1										
Criterion 2										
Criterion 3										

Motion: ☐ Grant
☐ Grant w/conditions
☐ Deny

By:

Second by:

Vote:	Denihan	Lopez	Wilkinson	Wolf	Wright
Yes					
No					
Abstain					

[illegible]

Hill & Failing retaining wall

