

WHITLEY COUNTY BOARD OF ZONING APPEALS

STAFF REPORT

20-W-VAR-9 DEVELOPMENT STANDARDS VARIANCE

Julie Steininger
2640 E. Stalf Road

SEPTEMBER 22, 2020

AGENDA ITEM: 2

SUMMARY OF PROPOSAL

Current zoning: LR, Lake Residential

Property area: 4,261± sq. ft.

The petitioner, owner of the subject property, is requesting a development standards variance for an encroachment into the required rear (street side) and side setbacks and for the minimum floor area on the property located at 2640 East Stalf Road. The property is Lot 32 of the Cedar Beach Addition to Tri-Lakes Resort.

The petitioner has proposed an approximately 34'x21' dwelling to replace the current 24'x24' dwelling. Per the submitted plot plan, the new dwelling would be located approximately 2.5' from the west property line at its nearest point and 2.8' from the east property line. The rear setback would be 12.1' from the right-of-way line of Stalf Road (21.5'± from edge of pavement). For reference, the current structure is located approximately 12.1' from the right-of-way line, 2.5' from the west property line, and 12.4' from the east line. Because of the planned demolition of the dwelling, any legal nonconforming standards would be removed as well.

Since this lot has lake frontage, rear setback standards apply to the street side. The required minimum rear setback is 15' and side setback is 5', necessitating a request for a 2.9' rear variance and 2.5' and 2.2' side variance. Additionally, the code requires a minimum floor area of 950 sq. ft., so a variance is also requested to permit the proposed 718± sq. ft. dwelling.

For reference, the lot immediately to the west was granted setback variances in 19-W-VAR-15.

Also note that the proposed dwelling may encroach into the mapped floodplain. Based on the submitted elevation information, the petitioner is advised to seek a LOMA to address this issue, or otherwise abide by the elevation requirements of the flood code.

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, including the existing structure. The proposed rear setback is the same as the current structure and comparable to the road side setbacks of other properties along the street and throughout the LR district, and should not injure the public safety on the road or cause further safety issues. Also, reasonable encroachments on the road setback designed to decrease encroachment into the floodplain are usually favorable for protecting the broader public health and safety.

The proposed reduced side setback may be a concern for public safety given the width of the lot. Prevention of fire spread and access to the property are major safety considerations, are reflected in the heightened building code requirements for any building setbacks of less than 5'. The Board should

strive to enhance public safety where possible, especially in the densely developed pre-building code areas.

The requested floor area variance would not be expected to be injurious, as it is larger than the existing dwelling which has not apparently caused any injury, and should still be adequate area for a reasonable dwelling unit.

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 and value of the area adjacent to the property as similar properties in the LR district have similar structures with encroachments. For example, the two properties to the west appear to enjoy nearly the same setbacks as the proposed.

The minimum floor area variance will also not likely affect the use and value. In some cases, an incongruously smaller structure could be detrimental to the overall value of an area. In this case, the proposal is larger than the current dwelling, so the increased conformance should have a generally positive effect on the adjacent area.

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. The proposed dwelling width of 34' does create a larger, although still noncompliant, floor area without need to build a second story or encroach farther into the floodplain, either of which might have additional effects on safety and value as discussed above.

Date report prepared: 9/15/20

BOARD OF ZONING APPEALS ACTION

Findings of Fact Criteria

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

Motion:

By:

Second by:

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

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