

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

21-W-VAR-7 DEVELOPMENT STANDARDS VARIANCE
David & Kellie Hosler
Approx. 2020 E. Bair Road

APRIL 27, 2021
AGENDA ITEM: 2

SUMMARY OF PROPOSAL

Current zoning: LR, Lake Residential

Property area: 10,145± sq. ft.

The petitioner, owner of the subject property, is requesting a development standards variance for an encroachment into the required side setbacks their property located on the south side of Bair Road, across from 2021 Bair Road in Section 11 of Thorncreek Township. The subject property is comprised of Lot 1 of South Fork Addition, platted in 1997. The petitioner plans to replat the property in order to create a new lot that would be sold to Matt Weber (owner of the house at 1977 Bair Road). This plat has not yet been filed pending the outcome of this variance request.

As shown on the submitted draft plot plan, the proposed lot would be a Y-shaped parcel. The proposed eastern lot line would be 5' from the petitioner's existing pole building and 5' from a proposed 40'x45' outbuilding on the new lot. The proposed building would be 10' from the west property line and 35' from the Bair Road right-of-way. Existing platted easements would be expected to be relocated.

In the LR district, lots created prior to the ordinance adoption in 2006 have a 5' side setback required. New lots created since then are required to have 10' side setbacks. Since the proposed replat would generate a new lot, the 10' side setbacks would be required.

Thus, the variance request for a 5' side setback variance based on the proposed new lot line.

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 health, safety, and morals as detached garages with the proposed side setbacks exist throughout the zoning district without injurious effect.

The general welfare may be injured by degrading the effectiveness of the zoning code if there is not a specific practical difficulty found for this property.

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 the same or smaller 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 may or may not result in some practical difficulty. The code mandates a larger setback for new lots being created, but the proposed is a replat of an existing subdivision that predated the code and that already enjoys 5' side setbacks. This replat would not

rearrange lots as is commonly seen with lake-area replats, but it would create a new buildable lot, and the code states that for new lots created, a 10' side setback applies.

Staff suggests that the Board might be able to interpret the code as requiring a 5' setback from the existing pole building, with a 10' setback from the proposed structure, yielding a 15' building separation. Even with such an interpretation, a variance would still be required for the new lot.

As to the self-imposed criterion, the shape of the proposed parcel creates an unusual acute angle of lot lines that does not lend itself to rectangular buildings. This shape is an outcome of the existing pole building and property lines. However, the proposed building size may be a self-imposed difficulty, as the 40' width could be reduced to 30' to be compliant with 10'/10' setbacks, or reduced to 35' to be compliant with the possible 10'/5' setbacks discussed above.

Date report prepared: 4/19/21

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>										

