

MINUTES
WHITLEY COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
April 27, 2021
7:30 P.M.

Whitley County Government Center
Meeting Room A/B

MEMBERS	PRESENT	ABSENT	STAFF
Tim Denihan		X	Nathan Bilger
Sarah Lopez	X		Mark Cullnane
Danny Wilkinson	X		
Doug Wright	X		LEGAL COUNSEL
Joe Wolf	X		Elizabeth Deckard
Kelley Sheiss (<i>alt.</i>)	NA		

AUDIENCE MEMBERS

The list of audience members, in-person and electronic, is attached to these minutes. The signed guest list is kept on record.

CALL TO ORDER/ROLL CALL

Mr. Wilkinson called the meeting to order at 7:30 p.m. Mr. Bilger read the roll call; the members present and absent are listed above. Mr. Wilkinson reminded the Board that, due to electronic member participation, any votes would need to be taken by roll call.

CONSIDERATION OF PREVIOUS MEETING MINUTES

The minutes for the March 23, 2021 regular meeting were not ready for review.

ADMINISTRATION OF OATH

Ms. Deckard provided the oath to the audience members wishing to speak.

OLD BUSINESS

There was no old business.

NEW BUSINESS

Mr. Wilkinson reviewed the rules of procedure for the meeting.

21-W-VAR-6, Setback Variance, David & Lanna Trimmer, E. Fox Drive

David and Lanna Trimmer requested a variance of the required front yard setback for a primary structure. The subject property is located on the northeast corner of E. Wilcken Road and E. Fox Drive in Section 11 of Thorncreek Township and is zoned LR, Lake Residential.

Mr. Bilger presented the staff report. He clarified that the subject property is at the northeast corner of the block at E. Wilcken Road and E. Fox Drive, which is at the southwest corner of the intersection of E. Wilcken Road and E. Fox Drive. He stated that petitioner wishes to place a 34'x48', 1.5 story detached garage on the subject property. As proposed, the structure would be set back 22' from the right-of-way line along E. Fox Drive. He said that this is a corner lot and, as such, front yard minimum setbacks apply to the frontage along E. Wilcken Drive and E. Fox Drive. The minimum front yard setback in the LR district is 35', thus petitioner has requested a 13' front yard variance. He stated that all other proposed setbacks were compliant.

Mr. Bilger presented aerials of the subject property and surrounding area. He presented and discussed a site plan for the proposal. He discussed the review criteria, noting that strict application of the Ordinance may or may not result in some degree of practical difficulty. He stated that while historical lot sizes may present practical difficulties for reasonable modern projects, petitioner owns three lots in common as the subject property and the proposed setback from the west property line is 91'. He added that, unless the property posed some particular problem that was not readily apparent, petitioner could move the proposed structure 13' to the west and be compliant with the Code.

Mr. Bilger asked the Board if it had any questions. Hearing none, Mr. Wilkinson asked the petitioner or representative to address the Board.

Larry Trumbull, 1824 E. Poplar Road, Columbia City, stated that he was representing petitioner. Mr. Trumbull stated that petitioner wanted to keep the structure near to an existing shed and garden in the southwest corner of the property. He added that petitioner prefers the proposed location because there was a private drainage tile running along the south edge of E. Wilcken Road that keeps the northeast corner of the property wet.

Mr. Wilkinson asked the Board if it had questions for the petitioner. Hearing none, he opened the public hearing. Hearing no public comment, he closed the public hearing.

Mr. Wilkinson asked the Board for further discussion. Hearing none, he called for a vote. The petition passed by a vote of 4-0, with all attending members voting in favor.

21-W-VAR-7, Setback Variance, David & Kelli Hosler, 2032 E. Bair Road

David and Kelli Hosler requested a variance of the required side yard setback for a primary structure. The subject property is located on the south side of E. Bair Road, approximately ¼ mile northwest of E. Esterline Road, in Section 11 of Thorncreek Township and is zoned LR, Lake Residential.

Mr. Bilger presented the staff report. He stated that this petition stems from the proposed creation of a new lot in the South Fork subdivision with plat filing pending the outcome of this petition. The property owner is interested in selling a proposed lot to a neighbor who wants to place a 40'x45' outbuilding on the yet-to-be-created lot. He said that the size of the proposed structure in relation to the size and shape of the proposed lot limits the potential locations where the structure could be placed. As proposed, the structure would only fit on the proposed lot such that the front yard setback would be 35', the west side yard setback would be 10', and the east side yard setback would be 5'. The proposed east lot line would also create a 5' west side yard setback from an existing 40'x80' outbuilding on the subject property. He stated that this petition is before the Board because 10' side yard setbacks are required for lots created in the LR district after the date of current Code adoption in 2006.

Mr. Bilger presented aerial images of the subject property and surrounding area along with a plot plan. He stated that the existing 20' utility and drainage easement along the west property line of the proposed lot would be expected to be reduced to 10' on a future plat.

Mr. Bilger discussed the review criteria. He stated that approval may be injurious to the general welfare through potential degradation of the Code if a specific practical difficulty was not identified. He said that the Board may be able to interpret the Code as requiring a 5' setback from the existing 40'x80' outbuilding. He said that the shape of the proposed lot may create a practical difficulty, but that the proposed size of the outbuilding may be a self-imposed hardship, as the proposed 40' width could be reduced to be compliant with the Code.

Mr. Bilger asked the Board if it had any questions. Hearing none, Mr. Wilkinson asked the petitioner or representative to address the Board.

David Hosler, 2031 E. Bair Road, Columbia City, stated that he wants to sell a proposed lot to Matt Weber so that Mr. Weber can construct an outbuilding on the property for personal storage. He said Mr. Weber cannot construct the outbuilding that he wants to due to the shape of the proposed lot.

Matt Weber, 1977 E. Bair Road, Columbia City, stated that he would like to place a 40'x45' detached garage on a proposed lot in South Fork Addition. He said that he had brought this petition before the Board to find out what size of building he could put on the proposed lot.

Mr. Wolf asked Mr. Weber if he is set on having a 40'x45' building or if he is open to a smaller structure. Mr. Weber said that he is not and that he is before the Board to find out what size of building it would allow him to construct.

Mr. Wright stated that most of the properties around the lakes that are granted setback variances were platted in the early- to mid-20th century and were not designed to accommodate modern dwellings and outbuildings. He said that a proposed outbuilding on this proposed new lot should adhere to the required setbacks for lots created after 2006 in a Lake Residential district.

Mr. Weber said that he wanted to avoid creating an additional lot because of the more restrictive minimum side setbacks required of lots platted after 2006, but also that he did not want to make Mr. Hosler combine 2032 E. Bair Road and 2046 E. Bair Road to avoid creation of a new lot because each one of those parcels contains an outbuilding that he may want to sell in the future and if the properties are combined he would have difficulty selling them off individually.

Mr. Wright stated that Mr. Weber had said that he was before the Board to see what he could get approved. Mr. Weber questioned this characterization of his previous statements. Mr. Wright clarified that Mr. Weber had said that he was before the Board to see what it would allow.

Mr. Hosler stated that he did not want to offer to Mr. Weber a piece of property upon which he could not build the type of building that he desired. He added that when he initially drew up an option for Mr. Weber, he thought that a 36'x36' building would fit on the proposed lot without encroaching on minimum required setbacks. He said that it would be truly helpful if the Board would allow a 5' side setback from his existing 40'x80' outbuilding.

Mr. Wright stated that the Code was created for a reason and that it would be degraded if all projects were allowed to deviate from it. He added that he felt the Board should uphold the minimum setbacks required by the Code.

Mr. Wolf stated that maintenance on the side of outbuildings that are so near to each other could be difficult in the future, especially if Mr. Hosler sold the parcel containing the existing 40'x80' outbuilding to a new owner. He said that there was no way to know if a new owner would be amenable to Mr. Weber trespassing, if necessary, to be able to repair his proposed outbuilding.

Mr. Hosler stated that he believed Mr. Weber could place a smaller outbuilding on the potential new lot but reiterated that he did not want to sell Mr. Weber a lot upon which he could not build the size of building he wanted.

Mr. Wilkinson asked Ms. Lopez if she had any comments. She stated she did not.

Mr. Wilkinson asked Mr. Hosler to clarify what would be the distance from his existing 40'x80' outbuilding to the potential new lot line to the east. Mr. Hosler said that he was proposing a configuration that would have a 5' side setback for Mr. Weber's proposed outbuilding and a 10' setback for his existing 40'x80' outbuilding, resulting in a 15' separation between outbuildings.

Mr. Bilger stated that the plan submitted by petitioner and presented to the Board showed setbacks of 5' for both the proposed and existing outbuildings, resulting in a 10' separation.

Mr. Wilkinson, Mr. Bilger, and Mr. Hosler discussed the proposal. Mr. Wilkinson asked for clarification and Mr. Hosler stated that his existing outbuilding would be 10' from the new lot line and that Mr. Weber's proposed outbuilding would be 5' away. Mr. Hosler added that Mr. Weber's proposed outbuilding could be placed 10' from the potential lot's western line without issue. Mr. Wilkinson asked Mr. Hosler to confirm that a setback of 10' from the potential lot's western line would be adequate. Mr. Hosler affirmed that this would work.

Anthony Hovis, 1999 E. Bair Road, Columbia City, stated that he was owner of a property directly to the west of the subject property and asked what would become of the existing utility and drainage easement along the existing western lot line.

Mr. Bilger stated that there is a platted 20' utility and drainage easement along the western line of existing Lot 1. He said that a replat to create a lot to accommodate Mr. Weber's proposed outbuilding would replace the 20' easement with a 10' easement. He added that 10' perimeter utility and drainage easements are the standard required by the Subdivision Control Ordinance. Mr. Hovis and Mr. Bilger further discussed possible configuration of the easement if a new lot was created.

Mr. Wilkinson asked the public for further comment. Hearing none, he closed the public hearing.

Mr. Wilkinson asked petitioner if they wanted to proceed with a proposal that would allow a 10' west side setback and 5' east side setback for the proposed outbuilding and a 10' west side setback for the existing outbuilding (10'-5'-10'). Mr. Hosler affirmed that this was correct and stated that he was in favor of a 10' easement in place of the existing 20' easement.

Mr. Bilger and Mr. Hosler discussed the proposed minimum side setback and easement along the western line of the potential lot. Mr. Hosler discussed other characteristics of the potential lot.

Mr. Bilger and the Board discussed the proposal. Mr. Bilger stated that the initial proposal was for side setbacks of 10'-5'-5'. He said that the proposal now being discussed was for side setbacks of 10'-5'-10'.

Mr. Wilkinson asked the Board for discussion.

Mr. Wilkinson asked Mr. Bilger how long petitioner would have to wait to refile in the event the current petition was denied. Mr. Bilger said that he would need to review the Code but believed the waiting period was 6 months.

Mr. Hosler stated that he understands concerns with public safety when structures are so close and that would like to see at least a 15' separation between the existing and proposed outbuildings.

Mr. Bilger and the Board discussed what could potentially occur if the request for setbacks of 10'-5'-10' were denied. Mr. Wright stated that a request for side setbacks of 10'-10'-10' would be compliant with the Code and would not require a variance. Mr. Wilkinson and Mr. Bilger confirmed that this was correct. Mr. Bilger stated that petitioner would still need to go before the Plan Commission for replat approval regardless of whether a variance was approved.

Mr. Bilger suggested that the Board make a motion to clarify what is being proposed.

Mr. Wilkinson asked Mr. Bilger for clarification. Mr. Bilger stated that the Code requires side setbacks of 10'-10'-10' and that such a configuration would not require a variance. He said that petitioner was now requesting setbacks of 10'-5'-10'.

Mr. Wilkinson asked the Board for a motion.

Mr. Wilkinson asked Ms. Deckard if it was appropriate for him as Chair to make a motion. Ms. Deckard confirmed that he could.

Mr. Wilkinson made a motion to approve 21-W-VAR-7 with the following condition:

1. Mr. Hosler's existing 40'x80' outbuilding would have a 10' side yard setback from a proposed lot line.
2. Mr. Weber's proposed outbuilding would have a 5' side yard setback from a proposed lot line.

Mr. Wilkinson asked the Board, petitioner, and staff if all understood the motion.

Mr. Wilkinson asked for a second to the motion. Hearing none, he stated that the motion died for want of a second.

Mr. Wilkinson asked the Board what it wanted to do.

Ms. Deckard and Mr. Bilger suggested that the Board be clear in whatever motion it made.

Mr. Bilger stated that the fifth member of the Board was not present and that might reasonable grounds for continuing the petition.

Mr. Wolf made a motion to continue 21-W-VAR-7; Ms. Lopez seconded. Motion passed a vote of 3-1, with Mr. Wilkinson voting in opposition.

21-W-VAR-8, Setback Variance, Jeffrey & Theresa Loudon, 7825 N. Arnold Road

Jeffrey and Theresa Loudon requested a variance of the required rear yard setback for an accessory structure. The subject property, commonly known as 7825 N. Arnold Road, Columbia City, is located on the west side of N. Arnold Road, approximately ¼ mile west of N. 250 West, in Section 36 of Etna-Troy Township and is zoned LR, Lake Residential.

Mr. Bilger presented the staff report. He stated that petitioner wishes to move an existing 8'x16' storage shed to make room for a planned addition to an existing dwelling unit on the subject

property. He said that the topography of the property restricts where the shed could be moved, and that petitioner has requested to move it approximately 25' to the east such that it would be 5.1' from the N. Arnold Road right-of-way line. He stated that the existing side setback of 5.1' would be maintained and added that, as a property zoned LR that lies between a lake and a public road, the front and rear yard setbacks are reversed. The required minimum rear yard setback in the LR district is 15', resulting in a requested variance of 9.9'.

Mr. Bilger presented aerial images of the subject property and surrounding area, along with a plot plan. He discussed the review criteria. He stated that the proximity of the shed to N. Arnold Road should not cause much concern as the right-of-way line was relatively far away from the edge of pavement.

Mr. Bilger asked the Board if it had any questions. Hearing none, Mr. Wilkinson asked the petitioner or representative to address the Board.

Eric Loudon, 7825 N. Arnold Road, Columbia City, stated that his parents are the property owners. He said that the proposed addition, topography, and location of the well to the south of the dwelling limit places to where the shed could be moved.

Mr. Wilkinson asked the Board if it had questions for the petitioner. Hearing none, he opened the public hearing. Hearing no public comment, he closed the public hearing.

Mr. Wilkinson asked the Board for further discussion. Hearing none, he called for a vote. The petition passed by a vote of 4-0, with all attending members voting in favor.

21-W-VAR-9, Minimum Main Floor Area Variance, Dennis Lincoln, 4341 S. Meridian Road

Dennis Lincoln requested a variance of the required minimum main floor area for a primary structure. The subject property, commonly known as 4341 S. Meridian Road, Columbia City, is located on the east side of S. Meridian Road, approximately 1/3 mile south of E. 400 South, in Section 35 of Columbia Township and is zoned AG, Agricultural.

Mr. Bilger presented the staff report. He said that petitioner has proposed construction of a 40'x72' pole building with 744 sq. ft. of living quarters. He stated that the minimum required main floor area of dwellings in the AG district is 950 sq. ft. He reviewed the proposed location of the structure and added that petitioner wanted to place the structure on the property in such a way that a traditional dwelling could be sited on the main body of the parcel in the future. He stated that petitioner has designed the living quarter section of the building such that it would be relatively easy to convert the space to non-living quarters. He added that petitioner has indicated that he did not want to construct a dwelling that has at least 950 sq. ft. of living space because he did not need that much space.

Mr. Bilger presented aeriels of the subject property and surrounding area, along with a site plan, floor plan, and elevations of the proposed structure. He discussed the review criteria and reviewed the suggested conditions. He stated that the Board reviewed a similar request at its previous meeting in March and discussed similarities and differences between the two petitions.

Mr. Bilger asked the Board if it had any questions. Hearing none, Mr. Wilkinson asked the petitioner or representative to address the Board.

Dennis Lincoln, 4181 S. Meridian Road, Columbia City, stated that, in addition to the subject property, he owns properties directly to the north and east. He said that he wants to build something that suits his needs.

Ms. Lopez asked petitioner if he intended to live in this structure; Mr. Lincoln confirmed.

Mr. Wright stated it appeared that the living area could be made compliant if it were enlarged by 9'. Mr. Lincoln stated that he did not want to do that because it would reduce the amount of storage space.

Mr. Wilkinson asked the Board if it had additional questions. Hearing none, he opened the public hearing.

Ronda Salge, 5465 N. 650 East, Churubusco, asked how conditions of approval for a petition such as this were monitored by the County. She also asked if the Board expects for variance petitions of minimum main floor area to be followed by petitions for special exception to allow secondary dwelling units.

Mr. Bilger stated that conditions one and two of this petition would be monitored in the same way that special exception approvals are monitored and that condition three would be monitored through title work were the petitioner to sell the property. He said that if a family member of the petitioner wanted to place another dwelling unit on the property, they would need to pursue a special exception for secondary dwelling unit.

Ms. Salge expressed her support for the petition.

Mr. Wilkinson asked the public if it had additional comment. Hearing none, he closed the public hearing.

Mr. Wilkinson asked Mr. Lincoln if he was familiar with staff's suggested conditions. Mr. Lincoln asked if additional zoning approval would be required if he or one of his family members wanted to build another dwelling unit on the property in the future. Mr. Bilger confirmed that such a use would require zoning approval.

Mr. Wright made a motion to approve 21-W-VAR-9 with the following conditions:

1. The variance is granted for the tenancy of the petitioner, or until the permanent dwelling is completed, whichever comes first.
2. The variance is granted only for the petitioner and is not transferable.
3. A deed restriction should be recorded to the effect that the living area is not compliant with the zoning code minimum, and any future owner must comply with the zoning code standards or seek an additional variance.

Ms. Lopez seconded.

Mr. Wilkinson repeated the motion with the conditions. Mr. Bilger and the Board discussed the implications of replacing "should" with "shall" in condition three. Mr. Wright amended the motion such that condition three stated, "A deed restriction shall be recorded to the effect that the living area is not compliant with the zoning code minimum, and any future owner must comply with the zoning code standards or seek an additional variance." Ms. Lopez reaffirmed her second.

Mr. Wilkinson called for a vote; motion passed by a vote of 4-0, with all attending members voting in favor.

21-W-VAR-10, Setback Variance, Stan & Sherry Ganczak, 977 E. Gatesworth Drive

Stanley and Sherry Ganczak requested a variance of the required side yard setback for a primary structure. The subject property, commonly known as 977 E. Gatesworth Drive, Columbia City, is located on the north side of E. Gatesworth Drive, approximately 1,200' north of N. Spear Road, in Section 3 of Thorncreek Township and is zoned LR, Lake Residential.

Mr. Bilger presented the staff report. He stated that petitioner has requested to construct an addition to the east end of their existing residence. Currently, the structure is 12.7' from the east side yard and the proposed addition would result in a 3' setback. He said that the Code required a 5' side setback for primary structures, resulting in a variance request of 2'. He stated that the proposed addition would be located outside the regulatory floodplain based on the Best Available map information.

Mr. Bilger presented aerials of the subject property and surrounding area along with a site plan. He said that much open space exists to the west of the dwelling on the subject property, but that the location of the existing garage and driveway at the east end of the dwelling made placing the addition on the west end impractical. He discussed the review criteria. He stated that Staff cautioned granting variances allowing side setbacks of less than 5' due to fire concerns, but that less injury could be expected in this case due to the adjacent property to the east being largely vacant. He said that the Board should consider the possibility that the owner of the adjacent property could, in the future, want to place a structure near the shared property line. He added that the location of the home could present practical difficulty, but that the Board should consider whether this is self-imposed due to the open space on the subject property to the west of the dwelling.

Mr. Bilger asked the Board if it had questions. Hearing none, Mr. Wilkinson asked the petitioner or representative to address the Board.

Stanley Ganczak, 977 E. Gatesworth Drive, Columbia City, stated that the house was so far to the east on the lot that they did not have many options for expanding the garage. He stated that the previous owners had used it to store their riding lawnmower and that it was not large enough to store their vehicle without blocking access to their electrical panel and water heater. He stated that this created a fire safety concern. He said that they would not be able to construct the addition on the west end of the home because there is a closed-loop geothermal system in the ground to the west of it. He stated that contractors he had spoken with told him that it would be very expensive to move the electrical and water from the east end of the home to the west end. He added that allowing a 3' setback from the east property line would let them fit their car in the garage without blocking access to the electrical panel and water heater.

Sherry Ganczak, 977 E. Gatesworth Drive, Columbia City, stated that the previous owners had moved the washer and dryer from the house to the garage and that this had reduced available space in the already small garage. She stated that the owner of the lot to the east uses it as lake access and does not live there. She said that they unsuccessfully attempted to purchase that lot from the owner to provide more area into which they could expand their garage.

Mr. Wilkinson asked the Board if it had questions of the petitioner.

Mr. Wright asked where the overhead garage door is currently located. Mr. Ganczak stated that it is facing E. Gatesworth Drive to the south.

Mr. Bilger asked petitioner if it was correct that the existing garage could be considered a small one-car garage and that they wanted to construct a reasonably-sized one-car garage. Mr. Ganczak stated that it would be closer to a 1.5-car garage.

Mr. Wilkinson asked if petitioner intended to demolish the existing garage down and construct a new one or if they wanted to add on. Mr. Ganczak stated that they did not want to demolish the existing garage, just add on to it.

Mr. Wright and Mr. Ganczak discussed the location of the proposed addition.

Mr. Wilkinson asked if the addition would expand the residence 21' to the east. Mr. Ganczak stated that the addition overall would be 21' wide but that it would result in the garage being 9.7' closer to the property line than it is currently.

Mr. Ganczak, Mr. Bilger, and the Board discussed the size and location of the proposed addition.

Hearing no further questions of petitioner from the Board, Mr. Wilkinson opened the public hearing. Hearing none, he closed the public hearing.

Mr. Wilkinson asked the Board for additional questions or discussion. Hearing none, he called for a vote; motion passed by a vote of 4-0, with all attending members voting in favor.

OTHER BUSINESS

There was no other business.

ADJOURNMENT

Mr. Wilkinson adjourned the meeting at 8:49 p.m.

GUEST LIST

1. David & Kellie Hosler2031 E. Bair Road, Columbia City
2. Matt Weber1977 E. Bair Road, Columbia City
3. Sherry Ganczak977 E. Gatesworth Drive, Columbia City
4. Stan Ganczak977 E. Gatesworth Drive, Columbia City
5. Larry Trumbull, Jr.....1824 E. Poplar Road, Columbia City
6. Dennis Lincoln.....4181 S. Meridian Road, Columbia City
7. Anthony Hovis1999 E. Bair Road, Columbia City
8. Suzan Hovis1999 E. Bair Road, Columbia City
9. Theresa Loudon.....7825 N. Arnold Road, Columbia City
10. Eric Loudon.....7825 N. Arnold Road, Columbia City
11. David Trimmer.....2060 E. Fox Drive, Columbia City
12. Lanna Trimmer2060 E. Fox Drive, Columbia City
13. Ronda Salge5465 N. 650 East, Churubusco

GUEST LIST – ELECTRONIC

14. Anne Creech.....9030 E. 300 North, Churubusco
15. Sonya Emerick5865 E. State Road 14, Columbia City