

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

21-W-VAR-17 DEVELOPMENT STANDARDS VARIANCE

OCTOBER 26, 2021

David Byers

AGENDA ITEM: 1

2594 E. Beech Ave, south side of Beech Ave, about 275' west of Hall Street

SUMMARY OF PROPOSAL

Current zoning: LR, Lake Residential

Property area: 7,800± sq. ft.

The petitioner is requesting a development standards variance for an encroachment into the required front setback on their (by virtual of a life estate) property located at 2594 East Beech Avenue in Section 12 of Thorncreek Township. The property is Lot 38 of the Highland Park Addition to Tri-Lake Resort (recorded in 1910). The property is currently improved with a detached garage near the Elm Ave. frontage (constructed, 2002) and a shed near the northeast corner.

The petitioner has proposed to construct a 14'x26' detached garage on the north side of the lot. The building would be approximately 20' from the Beech Avenue right-of-way and 7' from the west property line. The structure would be constructed over an existing concrete slab, apparently left from a garage demolished years ago, and the slab would extend from the building on the north and west sides.

Since this lot does not have lake frontage, but does have frontages on both Elm Avenue and Beech Ave, front setback standards apply to both road sides. The required minimum front setback for the LR district is 35', so the proposed is not compliant. The averaging rule of §5.03(D), if it may be applied to non-lakefront lots, results in a calculated setback of approximately 24', so the proposed 20' setback would still not be compliant.

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 health and morals as improvements with encroachments such as the proposed exist throughout the zoning district without apparent injury.

While the averaging of setbacks does exceed the proposed, many properties, both primary and accessory structures, along Beech Avenue have smaller setbacks than that proposed. Again, this is an indication that there has not been apparent injury to public safety for the purpose of this variance.

The 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 value and use of the area adjacent to the property as similar properties in the LR district have similar structures with encroachments, including several within the average setback calculation distance.

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 could result in practical difficulties. The petitioner desires to reuse an existing concrete slab as the floor for this building; shifting the building southward for conformance would reduce the amount that could be reused. Further, the property has a 10%± slope that starts roughly at the south edge of the proposed building, so shifting the location southward would require 2-3' of fill to create a level floor.

Note that the 2002 garage benefitted from the averaging rule to have a 20' front setback. It also was built into the slope that the subject building is proposed to avoid.

Date report prepared: 10/19/21

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					

50x158'

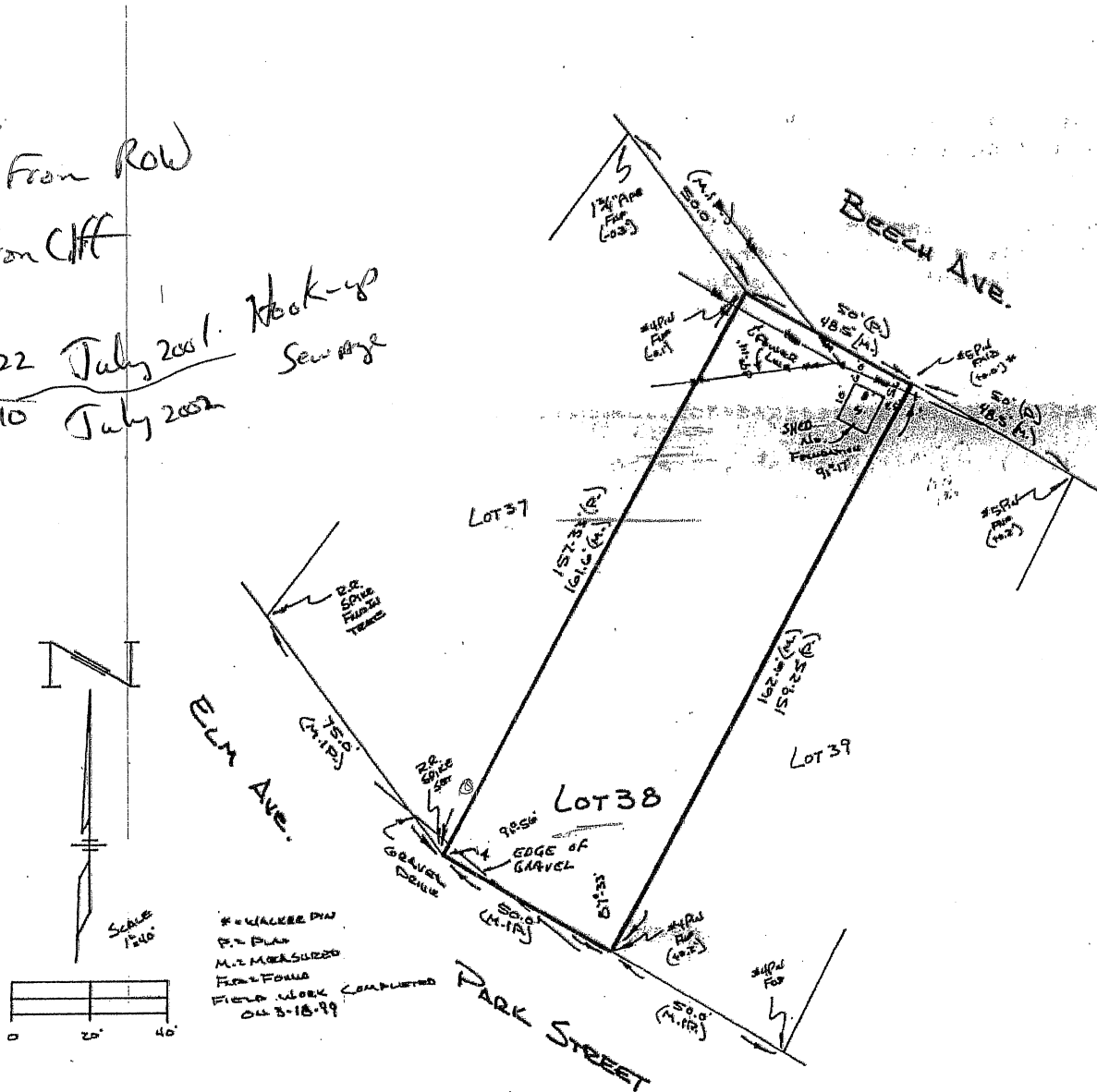
LEGAL DESCRIPTION: LOT 38 HIGHLAND PARK
BEECH STREET

This property is not in a flood plain (In Zone X) as defined by the Flood Insurance Rate Map dated 04-01-88, Community No. 180298-0002B, Whitley County, Indiana.

See page 2 of 2 for Surveyor's Report.

35' From ROW
6' to 8' from Cliff

4727.22 July 2001. Hook-up Sewage
4949.10 July 2002



I, THE UNDERSIGNED REGISTERED LAND SURVEYOR, LICENSED IN COMPLIANCE WITH THE LAWS OF THE STATE OF INDIANA, HEREBY CERTIFY THE HEREON PLAT TO CORRECTLY REPRESENT A SURVEY AS MADE UNDER MY DIRECTION AND THAT THIS SURVEY AND ACCOMPANYING REPORT HAS BEEN COMPLETED IN ACCORDANCE WITH TITLE 865-IAC 1-12 AND ALL OTHER AMENDMENTS THERETO.

I hereby certify on the 19th day of March, 1999 that the above survey is correct.

Surveyed for: Gilbert, James/Nancy

Survey No.: AG-149



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