

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

**18-W-VAR-17    DEVELOPMENT STANDARDS VARIANCE**  
J&K Contractors, Inc.  
7840 N. Brown Road

**NOVEMBER 27, 2018  
AGENDA ITEM:    1**

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**SUMMARY OF PROPOSAL**

Current zoning:   LR, Lake Residential  
Property area:    5,000± sq. ft.

The petitioner, contractor for the owners Stephen and Rosemary Burman, is requesting a development standards variance to allow the construction of a room addition and attached garage to the house at 7084 North Brown Road. The property is not platted. The lot has frontage on the lake, so the required rear setback is along the road side of the parcel.

The property has been the subject of at least one previous variance request. In 2004-W-VAR-26, the Board granted a 3' setback along the north property line to permit construction of a bedroom and bathroom addition. That addition was completed in early 2006.

Additionally, the existing detached one-car garage was constructed in 1992 with a 3' side setback from the south property line. The zoning code in effect at the time permitted a 3' side setback for accessory structures located in a rear yard. This requirement has since been changed to the current 5'.

As currently proposed, the detached garage would be demolished, and the shed on the west end of the house would be removed. A new two-car attached garage would be constructed on approximately the same footprint as the old garage, attached to the house by a proposed addition and interior remodeling. The proposed new building footprint would maintain the current 3' setback from the south property line, but would extend approximately 4' longer than the current garage. Other setbacks are proposed to remain unchanged or would be compliant.

The zoning code requires a 5' side setback in LR. While the detached garage enjoys a legal nonconforming status, its demolition would remove that status, necessitating the variance request for a 2' encroachment.

**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 porches, decks, additions, and other structural extensions are common encroachments throughout the LR zoning district with no or few injurious effects. The general welfare could be injured by perpetuating what is now an obsolete standard instead of upholding the current regulation, thereby degrading the effectiveness of the zoning code.*
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 encroachments of similar structures which have not resulted in any apparent adverse effect on the use and value of the adjacent area.*

*Further, the resulting location of the proposed structure is nearly identical to that of the existing detached garage, thus having negligible noticeable change.*

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 given the arrangement of the existing house precluding the feasibility of shifting the new garage northward. Also, the petitioner could avoid the variance request by incorporating the existing detached garage into the addition, but doing so would result in difficulties in constructing the addition and likely a building of a lower aesthetic quality than the proposed.*

Date report prepared: November 16, 2018

#### BOARD OF ZONING APPEALS ACTION

Motion:

By:

Second by:

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<b><i>Vote:</i></b>	<b>Deckard</b>	<b>Denihan</b>	<b>Klein</b>	<b>Wilkinson</b>	<b>Wright</b>
<i>Yes</i>					
<i>No</i>					
<i>Abstain</i>					