

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

18-W-VAR-5 DEVELOPMENT STANDARDS VARIANCE
Larry Anderson
East side of Old Lake Road, 750' north of 700N

MAY 22, 2018
AGENDA ITEM: 2

SUMMARY OF PROPOSAL

Current zoning: LR, Lake Residential
Property area: 3,300± square feet

The petitioner is requesting a development standards variance to allow the construction of a new accessory structure on the property he owns on the east side of West Old Lake Road, approximately 750' north of 700 North. The property is comprised of a portion of Lot 7 in Melvin Blain's First Addition to Maple Beach. The parcel size is approximately 33'x100'.

The parcel was effectively created in 2008 when the north 17' of Lot 7 was sold with Lot 6 to a new owner. At that, this parcel became non-buildable due to falling below the minimum lot area of 5,000 square feet, as well as no longer being a lot of record. The lot split was permitted, however, because the subject property was used as the frontage for the adjacent parcel to the east, also owned by the same owner. In 2015, that adjacent parcel was sold to another adjoining property owner, leaving the subject property by itself. In April of this year, the subject parcel was purchased by the petitioner, unaware that it was unbuildable due to the split history.

The site is currently unimproved. As proposed, a 24'x32' garage would be built, with resulting setbacks as shown below.

Setbacks	Proposed	Code	Variance
North, side	4.5'	5'	0.5'
South, side	4.5'	5'	0.5'
East, rear	43'	15'	NA
West, front	15' from R/W 25'± from property line	35'	20'

So, the petitioner is requesting variances for the minimum lot size in order to permit the parcel to be buildable, and for variances of the side and front yard setbacks to permit the proposed garage.

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 lot area variance will not likely be injurious to the public health, safety, morals, and general welfare as the minimum lot area requirement assumes that a lot would be used for a residential use, and so has is designed to permit adequate light, ventilation, and access for a residence. The proposed use as an unoccupied storage structure would not require the same elements as a residence, and so may be able to be constructed on a smaller area. It is important that this remain unoccupied as a residence, or else injurious effects could be created.

The proposed setback variances would also be unlikely to be injurious to the public health, safety, morals, and general welfare. The front setback would be approximately in line with the adjacent existing residences, which enjoy approximately 12' and 19' setbacks from the road right-of-way, and which have no apparent injurious effects.

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 other properties in the LR district have similar structures and similar encroachments which have not resulted in any apparent adverse effect on the use and value of 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 would result in practical difficulties since the current parcel area was created by application of the Ordinance that permitted the creation of a non-buildable parcel in 2008. The subsequent sale of the parcel to the east in 2015 should have included this subject parcel, but there was no regulatory mechanism in place to require the parcels to be sold together. This was not a situation created by the petitioner.

The application of the Ordinance would also result in practical difficulties when considering the setback variances. The front setback is approximately in line with the existing adjacent residences, and may meet the average setback rule allowed in Section 5.3(D) of the Ordinance; however, due to the variation in property lines and right-of-way lines, a precise measurement is not quite possible without surveys of several neighboring properties. The side setbacks variances arise because of the 24' width of the proposed garage being the minimum usable width for a standard garage. This is somewhat self-imposed, but there may not be a practical alternative to achieve the petitioner's intention.

Suggested Conditions

If the Board finds to approve the requested variance, staff suggests the following condition:

1. A commitment that the subject property shall not be used for residential purposes. Such commitment shall be recorded and be binding upon subsequent owners of the property, in accordance with the provisions of Indiana Code §36-7-4-1015.

Date report prepared: May 15, 2018.

BOARD OF ZONING APPEALS ACTION

Motion:

By:

Second by:

Vote: Deckard Denihan Klein Wilkinson Wright

<i>Yes</i>					
<i>No</i>					
<i>Abstain</i>					