

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

19-W-VAR-5 DEVELOPMENT STANDARDS VARIANCE
Kenneth and Jane Gick
2729 W. Buckles Road

**MAY 28, 2019
AGENDA ITEM: 2**

SUMMARY OF PROPOSAL

Current zoning: LR, Lake Residential
Property area: 5,460± sq. ft.

The petitioner is requesting a development standards variance to allow the rebuilding of a dwelling on their property at 2729 West Buckles Road. The property is Lot 4 of Rickett's First Addition to Loon Lake Resort, about 125' north of the intersection with Arnold Road.

As proposed, a new two-story dwelling would be constructed utilizing approximately the same footprint as the existing one-story dwelling dating from the 1930s. The new structure would extend somewhat nearer the lake, but would retain the existing side yard setbacks of 2.9'± on each side.

The zoning code requires a 5' side setback in LR. The existing dwelling enjoys legal nonconforming side setbacks due to its age. Removal of the structure to construct the new dwelling would remove the legal nonconforming status, prompting the variance request.

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 other primary structures have encroachments throughout the LR zoning district with no or few injurious effects. However, the continuation of noncompliant setbacks can degrade the purpose of the zoning code standards, which degrades the general welfare. Given the particularly tight nature of this lot, the Board must consider if upholding the code as written would provide a greater public benefit.

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

Generally, it is not expected that variances such as this 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. The reuse of the existing side setbacks established by a one-story structure for a two-story structure may have effects on the usage of immediately adjacent properties, in particular by reducing the amount of light available to the property to the north. Since the nearest structure on that property is a detached garage and the dwelling is located a significant distance from the subject property, the effect of increased shadows would likely not be substantial.

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 since the petitioner could avoid a variance and continue to enjoy the benefits of a legal nonconforming

setback by the extensive remodeling and renovating the existing structure rather than removing it and building completely new. Such a project would likely be about the same cost, but would not result in a structure entirely built to modern building and safety codes.

Date report prepared: May 22, 2019

BOARD OF ZONING APPEALS ACTION

Motion:

By:

Second by:

Vote: **Deckard** **Denihan** **Lopez** **Wilkinson** **Wright**

Yes

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No

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Abstain

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