WHITLEY COUNTY BOARD OF ZONING APPEALS
STAFF REPORT

19-W-VAR-8   **DEVELOPMENT STANDARDS VARIANCE**   **JUNE 25, 2019**
                 Dianne Schroeder   **AGENDA ITEM:**   2
                 2469 E. Shirley Ave.

SUMMARY OF PROPOSAL

Current zoning: LR, Lake Residential
Property area: 3,950± sq. ft.

The petitioner, contract purchaser of the subject property, is requesting a development standards variance to allow the construction of an accessory structure on Lot 8 of Pfeiffer's Addition to Tri-Lake Resort. The lot is currently part of a parcel comprised of Lots 8, 9, and 10, with an address of 2469 East Shirley Avenue. Lot 8 is proposed to be split off to the petitioner.

The subject lot is currently unimproved, though there are several trees on and near the site. The lot has two road frontages, so front setbacks of 35' apply to both the north and south sides of the property. Required side setbacks are 5'.

The petitioner is seeking to construct a 56'x30' pole building on the lot, which, if centered, would result in 4.8' side setbacks and 19.8' front setbacks. If so sited, the requested variances would be 0.2' on the sides and 15.2' on the fronts. However, given the experience with the adjacent property on Lot 7, in which a second variance was required to accommodate unexpected subsurface conditions, the petitioner is seeking additional room to shift the building location if necessary. So the requested setbacks are 4' on each side and 15' on each front, resulting in 1' and 20' maximum variances, with corresponding smaller variances for the opposite side of the structure.

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 accessory pole buildings such as the proposed are permitted and common throughout the zoning district. The potential 15' setback from the Wilcken Road right-of-way is smaller than that of many other improvements located along Wilcken Road, but is comparable to the setbacks of improvements located elsewhere in the LR district. However, the continuation of noncompliant setbacks can degrade the purpose of the zoning code standards, which degrades the general welfare.

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, or greater, encroachments of similar accessory structures. For example, setback variances for a larger pole building at 5609 N Center Street—two properties from this one—were granted in 2013, which has 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 might result in practical difficulties due to the double frontage lot requiring two front setbacks, one of which is on a very low volume street, and the age of the platted lot predating the zoning code requirements. If the same subsurface conditions exist on this lot as on the adjacent lot, they may be a practical difficulty if they result in encroachment into the side setback.

   However, the Board should weigh whether the variances arise from a particular condition of the property or from a self-imposition by desiring to construct a structure that is too wide for the property to start with.

Date report prepared: 6/13/19

BOARD OF ZONING APPEALS ACTION

Motion: By: Second by:

Vote:	Deckard	Denihan	Lopez	Wilkinson	Wright
Yes					
No					
Abstain					