

BOARD OF ADJUSTMENTS
MINUTES OF MEETING
January 4th, 2023

<p>CALL TO ORDER AND ROLL CALL</p>	<p>Mike called the regular meeting of the Whitefish Planning Board to order at 6:00pm. Board members present were Phil Boland, Ian Hasson, Doug Peppmeier, Mike Kelley, John Peschel, and Scott Wurster. Planning Director David Taylor represented the Whitefish Planning & Building Department.</p> <p>There were approximately 2 people attending in addition to the board members and staff.</p>
<p>AGENDA CHANGES <i>6:00 pm</i></p>	<p>Agenda was amended to include the following appointments:</p> <p>1. Selection of Board of Adjustment Chair ACTION: Peppmeier made a motion to nominate Mike Kelley for Chair position, seconded by Wurster. The motion passed unanimously.</p> <p>2. Selection of Board of Adjustment Vice-Chair ACTION: Kelley made a motion to nominate Doug Peppmeier for Vice-Chair position, seconded by Wurster. The motion passed unanimously.</p>
<p>APPROVAL OF MINUTES <i>6:03 pm</i></p>	<p>ACTION: Boland made a motion, seconded by Peppmeier to approve the November 1st, 2022 minutes without corrections. The motion passed unanimously.</p>
<p>COMMUNICATIONS FROM THE PUBLIC (ITEMS NOT ON THE AGENDA) <i>6:03 pm</i></p>	<p>None.</p>
<p>UNFINISHED BUSINESS: <i>6:04 pm</i></p>	<p>None.</p>
<p>PUBLIC HEARING 1: Colton Behr Administrative Appeal WZA 22-01</p>	<p>A request by Colton Behr for an administrative appeal of an interpretation by the Zoning Administrator of Whitefish Zoning Code Section 11-3-11-B, that retaining walls built within 6’ of a side or rear property line cannot exceed 2’ in height measured from the downhill grade. Structural retaining walls were built in the setback that exceed 2’ in height and the appellant believes they should be exempt due to topography. The subject property is located at 20 Woodland Place and can be legally described as Lot 1 of Whitefish</p>

	Lakefront Estates Subdivision, Section 26, T31N, R22W in Whitefish. (Taylor)
STAFF REPORT WZA 23-01 (Taylor) 6:04 pm	<p>Planning Director Taylor reviewed his staff report and findings. As of the writing of WZA 22-01, one comment was received from a neighbor.</p> <p>An additional public comment was received from the same neighbor and shared with the Board right before the meeting.</p>
STAFF RECOMMENDATION	Staff recommended the board uphold the decision of the Zoning Administrator with regard to the retaining wall setbacks and heights and exemption from the front yard setback for primary vehicle access.
BOARD QUESTIONS OF STAFF	None.
PUBLIC HEARING	Kelley opened the public hearing.
APPLICANT / AGENCIES	<p>Colton Behr, owner of General One Construction Group and property owner of 20 Woodland Place, stated three misleading points:</p> <ol style="list-style-type: none"> 1. 11-3-11-B2B clearly states you are exempt from side yard setbacks when it pertains to primary vehicle/pedestrian access. One retaining wall is 40” tall from the downhill finish grade. 2. 11-3-11-B2A discusses ADU setbacks. Asks if this is only pertaining to the front yard setbacks, are not ADU’s both front and side yard setbacks? 3. 11-3-11-B2A discusses finished grade. Behr states he views it as the actual grade. States the way it reads, “finish grade up to 24-inches is acceptable”, is an action he can take to remedy the retaining walls. <p>Behr stated the retaining walls in place are neighborhood appropriate. There is no off-street parking at 20 Woodland Place. States the retaining walls are necessary because of the 50-foot and 14% grades. Behr stated the code is very misleading and actually clear to the points the applicant described above.</p>
PUBLIC COMMENT	None.

**BOARD DISCUSSION
AND QUESTIONS FOR
APPLICANT**

Peppmeier asked Behr to clarify what is misleading in section 11-3-11-B2B. Behr responds that the last sentence expands rather than limits code acceptance.

Peppmeier addressed the May 20th email in which was noted that the code regarding retaining walls changed and it would be important to check with a Planner before proceeding—Peppmeier asked if he spoke with a planner as the email suggested. Behr stated he did not recall.

Cheryl Behr added a statement that their primary entrance to the home is on the side. Colton Behr stated that the code is in their (applicant) favor if you look at the code and not the intent of the code as Taylor describes it.

Hasson asked Colton to elaborate on intent. States that 11-3-11-B2B does not address side yard setback. Colton states that the very last sentence in 11-3-11-B2B, does not limit but expands on the code interpretation.

Wurster states he is confused about the applicants' argument. Ask to confirm that the applicant's argument is: a primary pedestrian access should be able to have an 8-Foot wall in place. Colton confirms that is the way he thinks that section reads.

Wurster stated that the Zoning Administrator noted that off-street parking spaces were not considered primary vehicle access under his interpretation under primary vehicle access.

Wurster asked to confirm that there was a building permit in place for 20 Woodland Place and that plans were submitted. Wurster asked Colton what the height of the retaining walls in the plans were submitted as. Colton confirms a building permit and plans were submitted but stated that the plans are not clear on the height of the retaining walls.

Wurster stated it was his understanding from the reading materials that the applicant had agreed to the 2-foot height requirement. Colton stated he was unsure what was determined when he met with staff previously. Colton stated the plans for retaining walls do not say 2-Feet.

Wurster asked for clarification as to why the applicant decided to appeal the Zoning Administrator rather than pursue other routes

	<p>mentioned. Colton stated it was a clear exemption that is meant for difficult topography lots to get pedestrians and vehicles to the buildings.</p> <p>Kelley asked if there were any further questions for the applicant/Board. Asked for any Public comment.</p> <p>Wurster questioned the Zoning Administrator (Taylor) if he had a response to the applicants' argument that the side walls are for primary pedestrian access.</p> <p>Taylor stated the previous code allowed up to 8-Feet for primary vehicle and pedestrian access, and the Council specifically did not want primary pedestrian and vehicle access to be in the side setback. Taylor stated he does not disagree with the applicant that this section could be worded more clearly.</p> <p>Peppmeier wanted to clarify that height and the setback are two different issues. Peppmeier stated that this code section does not alleviate any side yard setback.</p> <p>Kelley opened the floor to further questions or a motion.</p> <p>Wurster made a motion to deny WZA 22-01, seconded by Peppmeier.</p>
<p>VOTE <i>6:37 pm</i></p>	<p>The motion was denied unanimously.</p>
<p>GOOD AND WELFARE <i>6:38 pm</i></p>	<p>1. Matters from Board. Kelley made a recommended to staff to inform applicants in the future of precedents set, should the Board approve certain applications.</p> <p>2. Matters from Staff. No meeting scheduled for February.</p>
<p>ADJOURNMENT <i>6:42 pm</i></p>	<p>The meeting was adjourned on a motion by Kelley at approximately 6:42 pm. At this time there is no date scheduled for the next regular meeting of the Board of Adjustments.</p>