

**BOARD OF ADJUSTMENT
MINUTES OF MEETING
June 6, 2023**

<p>CALL TO ORDER AND ROLL CALL</p>	<p>Chair Kelley called the regular meeting of the Whitefish Board of Adjustment to order at 6:00 pm. Board members present were Ian Hasson, Mike Kelley, John Peschel, Doug Peppmeier, and Scott Wurster. Board member absent was Phil Boland. Senior Planner Wendy Compton-Ring and Planner Nelson Loring represented the Whitefish Planning & Building Department.</p> <p>There were approximately four people attending in addition to the Board members and staff.</p>
<p>APPROVAL OF MINUTES <i>6:00 pm</i></p>	<p>Peschel made a motion, seconded by Peppmeier to approve the March 7, 2023 minutes without corrections. The motion passed unanimously.</p>
<p>COMMUNICATIONS FROM THE PUBLIC (ITEMS NOT ON THE AGENDA) <i>6:00 pm</i></p>	<p>None.</p>
<p>UNFINISHED BUSINESS: <i>6:00 pm</i></p>	<p>None.</p>
<p>PUBLIC HEARING 1: Andrew & Denise Strong WZV 23-03 <i>6:02 pm</i></p>	<p>A request by Andrew and Denise Strong, is requesting a variance to the setback requirements for accessory buildings for a proposed garage replacement and expansion. The property is currently developed with a single family home zoned WR-4 (High Density Multi-family Residential District). The property is located at 405 Central Avenue and can be legally described as Lots 22, 23, 24, Block 61, WFSH in S36, T31N, R22 W, Flathead County.</p>
<p>STAFF REPORT WZV 23-03 (Loring)</p>	<p>Planner Loring reviewed his staff report and findings. As of the writing of WZV 23-03, no comments were received.</p>
<p>STAFF RECOMMENDATION</p>	<p>Staff finds that the conditions for granting relief from the code set forth in §11-7-7 are met and recommend approval subject to one condition of approval.</p>
<p>BOARD QUESTIONS OF STAFF <i>6:11 pm</i></p>	<p>Peschel confirmed the differences with this request to the one denied earlier this year and Planner Loring confirmed this request better meets the review criteria.</p>

	<p>Hasson asked staff for the total area for parking spaces and the garage and wondered if the garage can be located next to the accessory apartment and the surface parking space near the trees. Planner Loring suggested that would be a good question for the applicant. Hasson still has questions about whether or not the garage has to go in that location</p> <p>Wurster asked clarifying questions about expanding a nonconforming structure. Planner Loring responded this request has less expansion of the garage in the setback, as they are removing it all out of the side yard setback and it is proposed to be further from the rear yard and the actual structural expansion is out of the setback.</p> <p>Peppmeier noted the amount of building in the setback is reducing from the previous request.</p>
<p>PUBLIC HEARING <i>6:19 pm</i></p>	<p>Chair Kelley opened the public hearing.</p>
<p>APPLICANT / AGENCIES</p>	<p>Doug Rhodes, architect and representative for the Strongs, noted they really want to save the tree. Once they got the survey done, they moved the garage off the alley and off the side yard setback. They will be getting an arborist involved to protect the tree and will add snow guards and gutters to keep the snow/drainage on site. They are providing two vehicle parking spaces in the garage and one surface parking space for the apartment. The existing garage is accessed from E 4th Street which they would like to retain, as it is difficult to come in from the alley.</p> <p>Hasson asked the applicant how they can justify not the parking off alley and the applicant responded that it is difficult to access a garage off the alley versus a surface parking space for maneuvering and it is a busy alley. They would like to maintain the alley access off the street as it currently functions.</p> <p>Hasson continues to be concerned that this request is a special privilege and it is not the minimum needed to alleviate the hardship. In his mind, it still seems like the garage and the surface parking space can be swapped. If the Board grants this variance, he is concerned they are establishing a precedent for future garage requests.</p>

	<p>Peppmeier noted the new garage will be better than the existing condition.</p> <p>Chair Kelley asked if maintenance of the existing building is an option. Leo Keane, North Country Builders and representative to the Strongs, said the the existing garage was built in the 1950s and is not adequate for contemporary vehicles. A new garage will be a visual improvement to the property and the request has reduced the intrusion into the setbacks.</p> <p>Chair Kelley asked the applicant if it is an aesthetic concern to move the garage to the south and if it is even an option and the applicant’s representative noted there is still the rear yard setback issue. Also, it is not a good solution to come in from the alley for the garage and will be awkward for the apartment.</p> <p>Peppmeier the one criterion he is still struggling with is this garage the minimum? Is 24 x 24 the minimum needed to alleviate the hardship? With this request, the sight distance existing the alley is improved, but could the garage be smaller? The whole variance is about saving the tree. The garage is going to be along the alley regardless, but perhaps the width would be reduced to protect the tree.</p> <p>Chair Kelley asked if an arborist has visited the site and looked at the tree and what happens if the tree has to come out regardless? The applicant responded that an arborist has not come out to evaluate the tree but they are committed to this design.</p>
<p>PUBLIC COMMENT 6:41pm</p>	<p>Jean Peterson, 415 Central Avenue, this is a better solution than what the Board is suggesting. If they are coming close to what you want, it is good enough. As a neighbor to the south of this project, she is enjoying the improvements.</p> <p>The public hearing was closed.</p>
<p>MOTION / BOARD DISCUSSION 6:43pm</p>	<p>Peppmeier asked staff the regulations about a nonconforming structure and what can or cannot be done. Planner Loring stated the property owner can maintain the building, expand outside the setbacks and update no more than 50% of the value of the building.</p> <p>Chair Kelley believes the applicant is trying to improve the situation.</p>

	<p>Peschel appreciates the survey and believes this is a good option. He is also not sure a 24' x 24' garage is the bare minimum and what happens if the tree down, then what?</p> <p>Peppmeier is all for saving the tree but would be more comfortable with a condition about the tree.</p> <p>Peppmeier made a motion to approve variance WVZ 23-03, seconded by Wurster subject to the conditions and findings of fact in the staff report.</p> <p>Speaking to his motion, Peppmeier noted the applicant is improving the situation by removing portions of the garage from the setbacks and protecting a very large the tree. Access into a garage from the alley would be problematic and it would be very difficult – especially if the parking lot were to be redeveloped in the future.</p> <p>Peppmeier moved and Wurster to include a condition of approval that the applicant must submit a report by a certified arborist that evaluates the health and viability of the maple tree, confirm its ability to survive the proposed garage construction, and implement recommendations to protect the tree during construction. The amendment passed (4-1, Hasson voted against).</p> <p>Hasson thinks this is will be open season for people to request 2-foot variances for garages.</p> <p>Peppmeier responded that this is tree is a 42-inch maple, it is a very significant tree in town and should be preserved.</p> <p>Wurster noted the public comment we've received and all that has been done on the property in totality are in support.</p>
<p>VOTE <i>6:58pm</i></p>	<p>The motion was approved (4-1, Hasson voting in opposition).</p>
<p>PUBLIC HEARING 2: Joseph Pfeiffer WZV 23-04 <i>6:59 pm</i></p>	<p>A request by Joseph Pfeiffer for a variance for a 2nd floor addition where the existing home is located within the front and side yard setbacks. The property is currently developed with a single-family home and is zoned WR-4 (High Density Multi-Family Residential District). The property is located at 413 O'Brien Avenue and can be legally described as Lot 1, Amended Plat of Lots 19, 20, 21, 22, Block 58 Whitefish Original in S36 T31N R22W, P.M.M., Flathead County.</p>

STAFF REPORT WZV 23-04 (Compton-Ring)	Planner Compton-Ring reviewed her staff report and findings. As of the writing of WZV 23-04, no comments were received.
STAFF RECOMMENDATION	Staff finds that the conditions for granting relief from the code set forth in §11-7-7 are met and recommend approval subject to two conditions of approval.
BOARD QUESTIONS OF STAFF 7:02 pm	No questions for staff.
PUBLIC HEARING 7:00 pm	Chair Kelley opened the public hearing.
APPLICANT / AGENCIES	Branden Pfeifer, Whitefish. Described the project and that they want to also include an accessory apartment in the remodel for a local worker. Hasson confirmed, and the applicant concurred, that the building will not be expanding the footprint
PUBLIC COMMENT 7:06pm	None The public hearing was closed.
MOTION / BOARD DISCUSSION:	Hasson made a motion to approve variance WZV 23-04, seconded by Peschel subject to the conditions and findings of fact in the staff report. Hasson noted we have reviewed many variances and is in support provided the building footprint is not expanded Chair Kelley agrees
VOTE 7:07pm	Unanimous voted.
PUBLIC HEARING 3: Jason Pohlman WZV 23-05 7:08 pm	A request by Jason Pohlman for a variance to the front setback requirements due to an irregular lot line. The property currently is vacant and is zoned WR-3 (Low Density Multi-family Residential District). The property is located at 225 W 2nd St and can be legally

	described as Lot 6, Block 2, Gojendes, S36, T21 N, R22 W, Flathead County.
STAFF REPORT WZV 23-05 (Loring)	Planner Loring reviewed his staff report and findings. As of the writing of WZV 23-04, no comments were received.
STAFF RECOMMENDATION	Staff finds that the conditions for granting relief from the code set forth in §11-7-7 are met and recommend approval subject to two conditions of approval.
BOARD QUESTIONS OF STAFF 7:14 pm	<p>Hasson asked about the specific square footage in the variance and Planner Loring noted it is about 1% of the site.</p> <p>Peppmeier commented, if this was in an easement, this would not be an issue. Planner Loring agreed. Peppmeier further noted that Montana Department of Transportation (MDT) does not do easements.</p> <p>Peschel asked what the property is used for and Planner Loring stated it is for stormwater. Peschel further asked about the survey and if the request is just for this parcel or for two parcels and Planner Loring stated that the request is only for the western lot.</p>
PUBLIC HEARING 6:20 pm	Chair Kelley opened the public hearing.
APPLICANT / AGENCIES	<p>Jason Pohlman, Whitefish, MT. Thanked the Board for meeting. He said they were surprised to find the MDT area. It will still be landscaped and they have been working with staff regarding their proposal. He contacted MDT when this area was discovered but they had no interest in selling and having an easement instead. In their design they would like to have parking in the back of the building off the street and it would be nice to have outdoor living space facing the mountain. They are committed to doing the right thing.</p> <p>Hasson asked about the impact to the project if the building pushed back and the applicant responded that there would be less parking and part of that area is needed for traffic circulation. It is an interesting in infill project and noted the stormwater was installed by MDT for the benefit of the entire neighborhood, but it is impacting this property specifically.</p>

PUBLIC COMMENT 7:26pm	None The public hearing was closed.
MOTION / BOARD DISCUSSION 7:27pm	Peppmeier made a motion to approve variance WVZ 23-05, seconded by Wurster subject to the conditions and findings of fact in the staff report. Peppmeier, in speaking to his motion, said the setback will look like a 25-foot setback. These utilities are typically in easements and at the end of the day, it is a manhole and it is functioning as if it were in an easement. He noted, these rights-of-way are not easy to find without obtaining the actual documents.
VOTE 7:29pm	Unanimous voted.
GOOD AND WELFARE	1. Matters from Board. Peppmeier asked staff if a survey should always be a requirement in order to apply for a variance. Staff stated that we tell potential applicants to get one, but it is their risk if they don't and it isn't always needed. Wurster asked about the quorum needed for the meeting and to approve a variance. Staff said four members are needed to for a quorum and four members are needed to approve a variance regardless of the number of members present. 2. Matters from Staff. There are no items for the July meeting. Staff provided a legislative update to the Board and described a bill that permits governments to combine their Board of Adjustment and Planning Board into a Joint Land Use Board. Staff will be asking the Council if this is something they are interested in doing. There is an open seat on the Board of Adjustments.
ADJOURNMENT 7:35pm	The meeting was adjourned on a motion by Kelley at approximately 7:35 pm.