

CITY OF WHITEFISH

BOARD OF ADJUSTMENT

Date: Wednesday, July 6th, 2022

Place: City Council Chambers

Recorded By: Jessie Knapp

Members Present:

Phil Boland

Ian Hasson

Mike Kelley

Parker Kelly

Doug Peppmeier

John Peschel

Members Absent:

Scott Wurster

Staff Present:

David Taylor

A. CALL TO ORDER & ROLL CALL

Summary: The Committee Chair Mike, Kelley called the meeting to order at 6:00 pm.

B. APPROVAL OF MINUTES FROM MAY 3RD, 2022

Summary: Members reviewed the minutes of May 3rd, 2022

ACTION: Mike Kelley made a motion to approve the Minutes of May 3rd, 2022. Ian seconded and all were in favor. The motion passed unanimously.

C. COMMUNICATION FROM THE PUBLIC

Summary: None

D. UNFINISHED BUSINESS

Summary: None

E. PUBLIC HEARINGS

1. WZV 22-03 – 1640 W Lakeshore, Cate Walker

Summary: The applicants are requesting a variance to the yard setback requirements and height requirements for retaining walls to rebuild an existing driveway.

Dave provided a summary of the application and staff report.

- Applicant is requesting a variance to the setback and height requirements for retaining walls. Retaining wall in question is in a new access driveway that is in an easement on the adjacent property to the North.
- The property, Lot 3B, is zoned WR-1 and is a Flag lot with 15-foot setbacks on all sides. Lot is accessed by easement.
- March of 2020, City Council amended retaining wall standards in building setbacks.
- Retaining walls must meet a maximum of 4-feet, measured on the down-hill grade. Any retaining wall exceeding 4-feet must meet primary setbacks. However, there is an exception for primary vehicle access in the front setbacks that retaining walls can be up to 8-feet high. This lot is a flag lot and therefore does not have a front setback.
- Received one public comment letter in opposition to proposed variance from the adjacent lot owner to the North. Retaining wall is located on this neighbor's property.

Neighbor stated their property would be significantly impacted by this variance and that they were not contacted by the applicant.

Variance conditions to be met:

- Strict compliance with the terms of this variance will limit the reasonable use of the property because the owner would have difficulty rebuilding the retaining wall.
- Strict compliance would have the potential to deprive the applicants of a right enjoyed by other lots in this area of town.
- The hardship is a result of variable topography necessitating retaining walls on a driveway, and that this lot is a flag lot with 15-foot setbacks.
- The hardship is not peculiar to the applicant's property.
- The hardship was not created by the applicant as topographical and retaining wall issues existed prior to the current owner purchasing the lot.
- The applicants are not claiming an economic hardship.
- This variance will significantly impact the neighboring property and Lot 4 neighbors do not consent to the variance.
- The landscape architect suggested the retaining wall on the South side could be eliminated and the wall to the North could be reduced to 6.5-foot if a log structure on Lot 2B, also owned by applicant, were to be removed. Owners wish to retain log building.
- The applicants have demonstrated the variance is the minimum that will alleviate the hardship.

Recommendation: Staff is recommending the Board deny the variance WZV 22-03.

ACTION: Members noted that Finding 10 in the Staff report should be amended from the incorrect address of 1640 East Lakeshore to its' appropriate address: 1640 West Lakeshore.

Dave confirmed for members that main point of contention is regarding the retaining wall on the North side between Lot 4 and 3B.

Dave confirmed side yard setback for members:

- Retaining walls above 4-feet must meet full setback of 15-feet.
- Between 2-4-feet must meet 6-foot setback and 2-feet or less there is not setback requirement.
- On a normal lot for primary building access, the front setback is waived and an 8-foot retaining wall can be built. Because this is a flag lot there is no front setback, which puts this property in a unique situation.

No additional letters from members of the public were received.

Cate Walker with Northwest Design Studio, on behalf of DMH 37th GP LLC, was present and noted the following:

- Acknowledged this is a fairly complicated lot and requests by architect and owner have made this variance application difficult. The adjacent property in question has significant geotechnical requirements in order to support future house designs.
- Landscape architect, geotechnical engineer, architect, and general contractor are all aware of the requirements of this project and want to do right by adjacent property owner.
- Opportunity to amend variance was offered by Dave Taylor, but ownership of Lot 3B requested to proceed with submittal.
- Applicant representative does not think this variance is a great option.

Members discuss the following with Cate:

- Doug Peppmeier states the house appears to be too large for the lot in question.
- Architects and owner prefer to place the retaining wall on the adjacent lot rather than on Lot 2B which is owned by the same applicant.
- Applicant does have an alternative option to adjust location of party barn by 6 or 7-feet to the South. This would allow necessary driveway adjustment, which would require a 6-foot max retaining wall. Cate believes this is the better option.
- Applicant does not want to remove log structure on 2B and replace it with primary vehicle access.
- Any amended plan would still require a variance application.

Wilson Actin, owner of Lot 4B and speaking on behalf of neighbors, opposes this variance and noted the following:

- Strict compliance would limit reasonable use of their property is not applicable because applicant has an adjoining property that could house the primary vehicle access.
- Variance does not adversely affect neighboring property is not applicable as this variance would significantly reduce adjacent lot value and property usage.
- Variance is the minimum variance required is not applicable as there are alternative routes to achieve primary vehicle access to Lot 3B.
- Granting of the variance would permit a special privilege to applicant and allow applicant to build freely on neighboring property without consent from neighboring property owner.

Members further discuss the following items:

- Members discuss if a neighboring property is economically impacted should variance be approved.
- Adjacent property owner unable to quantify impact but confirm they will be impacted significantly through material loss and future lot usage.
- A legal easement will be necessary for owners to access Lot 4 because of its classification as a flag lot.

ACTION: Ian Hasson made a motion to deny variance application WZV 22-03. Doug Peppmeier seconded the motion for approval, and all were in favor. The motion passed unanimously.

F. NEW BUSINESS

Summary: There will be a meeting August 2nd, 2022.

G. GOOD AND WELFARE

1. MATTERS FROM BOARD

Summary: None.

2. MATTERS FROM STAFF

Summary: None.

H. ADJOURNMENT

Summary: The meeting adjourned at 6:27pm.