

City of Colville

ZONING BOARD OF ADJUSTMENT

August 24, 2009

9:00 a.m. – City Hall

MINUTES

The Colville Zoning Board of Adjustment met on Monday, August 24, 2009, in the Council Room at City Hall. Chairman Chris Montgomery called the meeting to order at 9:00 a.m. with a quorum present.

MEMBERS PRESENT: Diana Raines, Sandra Wilma, Chris Montgomery, and George Tate. MEMBERS ABSENT: Ned Swanson. STAFF PRESENT: Director of Building & Planning Jim Lapinski and Assistant Planner Melinda Lee. OTHERS PRESENT: J.R. Kaschmitter, Julie Kaschmitter, David E. Smith, Margaret Smith, Betty Heeney, and James Carney. RECORDING SECRETARY: Susan Davis.

MINUTES OF PREVIOUS MEETING

The minutes of the previous meeting of July 20, 2009 had been distributed to each member prior to the meeting. Sandra Wilma moved and Diana Raines seconded the motion to approve the minutes as presented. Roll Call: Diana Raines – yes; Sandra Wilma – yes; Chris Montgomery – yes; George Tate – yes. Motion passed unanimously.

PUBLIC HEARING

Subject: Variance Application #1-09
Applicant: John & Julie Kaschmitter
Location: Crestview Drive
Request: To vary from the standard 20-foot front yard setback requirements within the R-1 (Single Family Residential) District pursuant to Chapter 17.20 of the Colville Zoning Ordinance

Chairman Chris Montgomery convened the scheduled public hearing to consider a request for a variance by John & Julie Kaschmitter. The Chairman reviewed the subject and outlined the hearing procedure. He asked if any of the Board members had an interest in the matter being heard which would be in conflict with the appearance of fairness requirements. Diana Raines stated that she and Julie Kaschmitter are co-workers and briefly discussed the variance process. There were no objections from the public to any of the Board members participating in the hearing process. None of the other Board members had engaged in communications with either proponents or opponents outside the hearing on the issue to be heard. Chairman Montgomery declared the public hearing open and requested the staff report.

Assistant Planner Melinda Lee presented the staff report, which had been distributed to each Board member and the applicant prior to the meeting (copy on file). Copies of the staff report were available to the public. Ms. Lee explained that John and Julie Kaschmitter submitted a request for a variance from the minimum front yard setback requirements within the R-1 (Single Family Residential) District pursuant to Chapter 17.120 of the Colville Zoning Ordinance.

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Ms. Lee explained that the subject property is a vacant lot located on the west side of Crestview Drive, just north of Forest Avenue, designated as Parcel A on attached Exhibit A.2. The applicant is proposing to construct a new home on this site with a total footprint of 2,076 square feet. The purpose of the request is to vary from the standard 20-foot required front yard setback to zero at the front property line due to an unusually wide vacant public right-of-way abutting their property.

Based on variance procedures outlined in Chapter 17.88 this application is classified as a 'Major Variance' which is defined as a reduction or increase of more than 10% from a quantitative provision of the applicable title. A Major Variance requires a Type III review process before the Zoning Board of Adjustment pursuant to the Colville Municipal Code.

An analysis and evaluation of the site was presented which identified immediate surrounding land use as residential. Mount Carmel Hospital, the Northeast Washington Medical Group clinic, and Pinewood Terrace Nursing Home are located to the northeast of the property.

Ms. Lee advised that the Crestview Addition was platted in 1953. The neighborhood consists of long-established homes. Just east of the site on Crestview Drive, a 2-lot short plat was done in 2008 on Lot 15, where two new manufactured homes have already been established.

The applicant's property is 7200 sq. ft. in size and is currently vacant. The lot is located on the west side of Crestview Drive, at the base of a slight slope, as illustrated on attached Exhibit C. Ms. Lee advised that the front property line is located approximately 33 feet from the edge of the paved roadway. The standard 20-foot front-yard setback would place the structure approximately 53 feet from the edge of the pavement, which would create an extremely long driveway. The actual paved portion of Crestview Drive was not improved within the designated right-of-way, as platted.

The applicants cited the following four reasons for their request;

1. To more evenly match the right-of-way characteristics of the established neighborhood;
2. To minimize the length of their driveway to the right-of-way;
3. To preserve a 50+ year old tree located at the back of the property;
4. To minimize the impact the planned home construction would have on their neighbor's view.

Melinda Lee confirmed that the proposed residential land use and single family residential development is compatible with the surrounding land uses and is consistent with the purpose of the R-1 District. As outlined in the staff report, the minimum development standards in the R-1 District were reviewed. Public utilities and services are available to the site. Fire protection and law enforcement will be provided by the city.

This proposal is classified as a "categorical exemption" pursuant to WAC 197-11-800(6)(b) (Part Nine – SEPA Rules) and does not require SEPA environmental review. Categorical exemption does not prohibit SEPA review if it is determined that a proposed action may have adverse environmental impacts. Staff review found no indications that the proposal would cause probable adverse environmental impacts.

Public notification was provided as required by the Colville Zoning Ordinance and other applicable laws. One comment from an adjoining neighbor was received on August 21, 2009 which was distributed to each member at the beginning of the meeting (copy on file).

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Melinda reviewed the Zoning – Variance Provisions as provided in Chapter 17.88 of the Colville Zoning Ordinance and outlined in the staff report. Based on the variance criteria, Ms. Lee presented suggested findings of fact for Board consideration. She stated staff concluded that adequate justification exists to grant the requested variance if the Zoning Board of Adjustment is favorable to doing so.

At this time, the Chairman asked for questions from the Board members to staff.

Sandra Wilma pointed out in the attached Technical Review Committee (TRC) minutes a couple of the members recommended the variance be denied due to concerns about maintenance of the road and utilities and the potential for future realignment of the road leaving no setback for the proposed dwelling. Director of Building & Planning Jim Lapinski explained that staff in his department reviewed the TRC discussion and determined that there are no issues that would prevent the Board from approving the request. Staff concluded that it was not probable that the City would ever realign the roadway as this subdivision has been significantly developed and the distance between the pavement and the right-of-way edge would be adequate. Jim stated the Street Department has no plans in the future to realign Crestview Drive.

George Tate noted that Crestview Drive has been developed on a portion of Lot 2 across the street. He felt if that property owner ever wanted to put in a curb in the future on his property line then the City would have no choice but to realign the street. Chris Montgomery explained that once public funds have been expended for street development and maintained by the public for a period of 5 years, it becomes a public right-of-way. The owner of Lot 2 has lost ownership of that property, or in the least, it is subject to an easement for Crestview Drive.

Mr. Tate asked if there are water and sewer lines in the 33 feet of undeveloped right-of-way adjacent to the subject property. Staff confirmed that there are no utilities in that area. The location of utilities was illustrated on attached Exhibit A.2.

Sandra Wilma requested clarification regarding yard requirements as outlined in Chapter 17.20.030, attached as Exhibit C.1. Staff reviewed the standards and confirmed that the setbacks on the adjacent Parcel B comply with current standards.

Chris Montgomery asked if there were any petitions or communications to be presented. He referenced the letter received August 21, 2009 from James Carney, 105 Crestview Drive (copy on file). There were no other comments.

Due to a time conflict, the Chairman asked to hear from Mr. Carney. James Carney, 105 Crestview Dr., Colville, WA stated that he lives on the property directly north of the subject property. If the variance is granted, he felt vehicles parked in the proposed driveway will hamper his visibility when backing out of his driveway. He also expressed concern about snow removal and storage which could also block his view from his driveway. He indicated he would have no problems if the garage were built on the other side of the subject property.

At this time the applicant was given the opportunity to address the Board relative to the variance request.

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J.R. Kaschmitter, applicant, 985 E. Forest, Colville, WA, indicated that the house plan could be flipped if necessary, but the reason they want the garage on the north side is so they can locate the house closer to the road to allow for a larger back yard. Mr. Kaschmitter explained how flipping the floor plan would impact the lot.

Diana Raines expressed concern that if the floor plan was flipped it could interfere with Mr. Carney's side view from his deck on the adjacent lot to the north.

George Tate expressed the feeling that it would seem to make more sense for the City to vacate that undeveloped portion of the right-of-way if there are no future plans to realign the street. Staff explained that typically a petition to vacate is submitted by a property owner, which requires an extensive process. Ultimately, if a vacation is approved, the adjacent property owner(s) would have to compensate the City for the property. Chris Montgomery felt that could be more problematic because if the two property owners to the north didn't want to participate in the petition, off-sets in the right-of-way could result.

Diana Raines requested clarification on the development of driveway and storm water runoff. Mr. Kaschmitter explained that there is a natural ditch along the street that would allow for drainage. He proposed a concrete apron in front of the garage with pavement to the street. Melinda Lee responded that it appears the Public Works Department prefers pavement in that undeveloped area as opposed to concrete because it is easier to remove. Staff recommended the property owner coordinate driveway construction with the Street Department.

The Chairman asked to hear from anyone else wishing to speak for or against the variance request. Seeing and hearing no one, the public testimony portion of the hearing was closed.

In the discussion which followed, the Board addressed the concerns that had been expressed by Mr. Carney. Staff confirmed that there are no specific off-street parking restrictions in the residential areas. Mr. Kaschmitter stated that he intended to plow and store all snow from the driveway to the south side away from Mr. Carney's lot. He pointed out Mr. Carney's rock wall is about 3 feet in elevation higher than the subject property.

Margaret Smith, 985 E. Forest, Colville, WA, indicated she has backed out of Mr. Carney's driveway and it is awkward with or without a development there as far as sight distance.

George Tate expressed a concern that the Board's decision could set a precedent. Jim Lapinski explained that every variance application is based on its own unique circumstances. Chris Montgomery did not feel the misalignment of Crestview Drive is a common problem throughout the city. He felt the Board's decision would not be precedent setting.

Jim Lapinski presented an illustration showing an alternative option for placement of the house on the lot.

George Tate and Sandra Wilma suggested that the Board consider a 10 foot variance instead of the requested 20 feet as the minimum variance necessary to allow for the reasonable use of the land. It was felt that options for placement of the house have been identified which could accommodate the

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applicant's plans. Ms. Wilma pointed out a 10 foot variance would be in keeping with the average front yard setback for many homes northerly and easterly along Crestview Drive, with the average distance from the building to the pavement being 43 feet. She felt by allowing a zero setback essentially the property owner's entire front yard would be public right-of-way which could appear to be a special privilege. Mr. Tate added that if Crestview Drive was realigned in the future there would be at least some setback to the property line.

Diana Raines reiterated a concern that if a 10 foot setback is allowed the house plan would still need to be flipped which could affect Mr. Carney's view from his back deck. She also felt that applicant should work with the Street Department before doing anything on the public right-of-way.

In the discussion which followed Mr. Montgomery suggested amendments to the findings of fact and conditions of approval to address the concerns of the Board.

Following discussion, Chris Montgomery moved to approve a 10-foot variance based on the following findings of fact and conditions of approval:

1. *That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings in the same district.*

The subject lot is adjacent to Crestview Drive just north of Forest Avenue. The dedicated public right-of-way for Crestview Drive and the actual paved portion of the roadway are somewhat misaligned which creates an unusually wide span between the applicant's property and the roadway pavement. The misalignment is not generally applicable to properties within the R-1 District or the surrounding neighborhood.

2. *That literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this title.*

The standard required front yard setback is 20 feet. When a home is constructed that meets this minimum setback, the driveway length would be a minimum of 20 feet from the building to the edge of the roadway. In this situation, a 20-foot setback would cause the driveway to extend an additional 33 feet beyond the property line to the paved portion of the roadway, creating a driveway that is approximately 53 feet in length. The extended driveway would serve no purpose other than literal compliance with setback standards. To the north and east the average setback from the pavement is 43 feet and to the south the average setback from the pavement is 36 feet.

3. *That the special conditions and circumstances do not result from the actions of the applicant.*

Crestview Homes was platted and recorded in 1953, and development commenced shortly thereafter. The alignment for this roadway was constructed in excess of 50 years ago. The physical abnormalities of the subject area were not the result of actions by the applicant.

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4. *That granting the Variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings in the same district.*

The minimum setback for new construction is 20 feet and the applicant has the option of constructing the proposed home in a manner that would meet setback standards. The immediately surrounding area is a long-established neighborhood. The "as-built" city street of Crestview Drive is severely misaligned with the platted street to the extent that it encroaches on Lot 2 across Crestview Drive to the east of the subject property approximately one-half the width of the "as-built" street.

Northerly and easterly along Crestview Drive, the average front yard setback for the first eight homes is 34 feet, with the average distance from the building to the pavement being 43 feet. The first 10 homes to the south of the property along Pine Street have an average front yard setback of 24 feet. The average distance from building to pavement is 36 feet. The proposed variance would allow the applicant to have setbacks more in-keeping with the surrounding neighborhood, which would not appear to be a special or unusual privilege.

5. *The granting of the Variance will be in harmony with the general purpose and intent of this title, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.*

The intent of requiring a front yard setback in residential districts is to provide for open space between the public right-of-way and the residential structures. If the home is constructed at the property line, with a zero setback, there would still be a visual separation of the structure and the paved portion of the roadway with an already-established, landscaped area.

With the current alignment of Crestview Drive, granting relief through variance would not be detrimental to the public welfare, nor would the city's ability to provide proper roadway clearing in the winter months be hampered. As a possibility rather than a realistic probability, if the described misalignment of roadway were re-aligned to its actual location sometime in the future, the result of the variance would have the potential of creating a degree of hazard by obstructing the city's ability to properly maintain the roadway in normal fashion. It may also restrict the area that may be needed for the installation and maintenance of future utilities. Neither situation is foreseeable at present time and there are no City plans for realignment in the future.

6. *That the Variance is the minimum Variance that will make possible the reasonable use of the land, building, or structure.*

It does not appear that the applicant has overextended their request in order to meet their intended reasons, as stated on the variance application and in their justification letter.

Any variance of less than 10 feet will require the applicant to flip their house floor plan and cause the garage to be moved to the south and the covered deck to be moved to the north which will unreasonably interfere with the view from 105 Crestview Drive to the north. The driveway for 105 Crestview Drive to the north lies approximately 3 feet in elevation higher than the proposed driveway of the applicant.

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CONDITIONS OF APPROVAL

1. All snow removal from the applicant's driveway shall be to the south and shall not utilize the 5 foot side yard setback to the north.
2. The driveway surface shall be approved by the City Engineer and/or City Street Department.
3. The setback shall be at least 10 feet from the right-of-way for Crestview Drive.

Saundra Wilma seconded the motion. Roll Call: Diana Raines – yes; Saundra Wilma – yes; Chris Montgomery – yes; George Tate – yes. Motion carried unanimously.

COMMUNICATIONS & PUBLIC PRESENTATIONS: There were none.

OLD BUSINESS: There was no Old Business to be presented.

NEW BUSINESS: There was no New Business to be presented.

REPORTS

Jim Lapinski reported that George Tate has submitted his resignation from the Board after serving as a member for 32 years. His resignation is effective at the close of the meeting.

ADJOURNMENT

As there was no further business to come before the Board, Saundra Wilma moved to adjourn. The motion was seconded and the meeting was adjourned at approximately 11:10 a.m.