



MINUTES

Board of Adjustment

Community Center, 3rd Floor Conference Room

4 p.m.

Thursday, October 7th, 2021, at 4 pm | Meeting called to order at 4:02 pm by Donna Kostelecky, Chairperson (at this time, Ms. Kostelecky, Vice-Chairperson, has been put into the Chairperson position until the end of the year 2021, as the current Chairperson, Stormi Brosseau, did resign from her position).

Attendance

Members Present: Donna Kostelecky, Chairperson; Judy Barber; Bill Johnston. Quorum is determined.

Members Absent: None

Staff Present: Carl Hamming, Planning Director; Gayla Hess, Planner II; Carlye Hansen Planning Department Secretary

Guests Present: Please see sign-in sheet. **See attachment**

Approval of Minutes

May 13th, 2021

Motion was made by Bill Johnson to approve minutes from May 13th, 2021; seconded by Judy Barber. Motion passes 3-0.

Public Hearings

1. V21-003 Desiree Wurster / Steve Ward

PUBLIC HEARING on request by Desiree Wurster and Steve Ward for a variance to allow relief from [Sec. 24-236](#) of the Development Permit System which limits maximum structural height of structures to 28 feet for structures within the West Valley Development District. Applicant proposes to build a two-story residence. Property is legally described as:

PINTLER PEAKS, S20, T05 N, R11 W, Lot 6A, ACRES 16.5, ANNEX 412B

Staff Report

Carl Hamming, Planning Director reviewed and presented the staff report put together by he and his office. All content can be located on the ADLC website. Mr. Hamming reviewed the nature of the request by Desiree Wurster and Steve Ward to request relief from [Section 24-236](#) which limits maximum residential structural height to 28 feet. Applicant wishes to construct a residential house to be 37 feet at its maximum height.

Mr. Hamming stated that the applicants simply state that they are looking to build above their garage, and they would like to build a garage that is large enough for their recreational vehicles.

Mr. Hamming only received one phone call regarding the variance, and this was from a neighboring landowner and wondering what all this entailed. They did, however, have no objections to this.

The Planning Department has recommended approval of the variance request and they do have several proposed recommendations, and conditions, and these were gone over in detail.

Questions from the Board

Bill Johnson asked what the total height of the structure will be. Mr. Hamming stated that this would be 37 feet if the variance height is granted, and the WVDD is a 28-structure height maximum.

Ms. Kostelecky asked why the maximum height is 28 feet and why we would not follow this as it is "on the books". Mr. Johnston stated that he can give the history on this. When they were putting together the developmental districts, someone realized that all the surrounding counties had a height limit. ADLC did not have any height limit, so they figured if other counties had one, then they must need one. They came up with the conclusion of 28 feet being the maximum.

Applicant Report

Steve Ward, who is living in Washington is on the phone today. He asked if there were any questions from the Board or what the Board needs to know. Mr. Hamming stated that it would be helpful for the Board to hear why they are requesting the variance and why they want to build up to the 37-foot request.

Mr. Ward stated that this will be the last home that they are going to own. They have an RV. The house that they are proposing is a barn-style house. They have three horses. The garage area will be 3 stalls. He has a 30-ft motorhome which he really wants to be inside rather than being snowed on. He would like the upstairs living quarters to be grand with higher ceilings. They did pick the location of the house for the view, and they set it back below the hill a little bit so it wouldn't be an eyesore. Folks from the highway cannot see it. There are not many neighbors who can see where they are at. They love this area, and he states that this is what his wife really wants. They are trying to do everything the right way and they had no idea when they bought the property that there was a 28-ft height restriction until they started the blueprinting process and then they heard from the Planning Department that there is this restriction, so they are wanting to go about this the proper way with the procedures set forth.

Questions from the Board

Mr. Johnston confirmed that the drawings that were received are of the barn that he wants to build, and Mr. Hamming confirmed that these were the ones submitted by the applicant as part of the variance request.

Public Comment

None

Motion

Motion is made by Bill Johnston to approve this the variance request to allow the maximum structural height to exceed 28 feet to a height of 37- ft at the highest point with the recommendations and conditions as presented by the Planning Department; seconded by Judy Barber. Motion passes 3-0.

2. Variance 21-004 Charles and Sandra Wargo

PUBLIC HEARING on request by Charles and Sandra Wargo for a variance to allow relief from [Sec. 24-74\(b\)](#) of the Development Permit System which requires a 5 foot setback from the side lot line within the Low Density Residential Development District. Applicant proposes to build a new garage within 17 inches of the side lot line.

WESTERN SECOND ADDITION, S04, T04 N, R11 W, BLOCK 10, Lot 1

Staff Report

Gayla Hess, Planner II, reviewed and presented the staff report put together by her and her office. All content can be located on the ADLC website. Ms. Hess reviewed the nature of the request for relief from [Sec. 24-74 \(b\)](#) which requires a 5-ft setback from the side lot line within the LDRD. The applicant proposes to build a new garage next to an existing structure. The proposed garage would be placed 17 to 20 inches from the existing fence (side lot line) near the alley.

The Planning Department did reach out for comment from other departments. The Road Department did state that they did not foresee any issues with this request.

She did receive comment from Leanna Schmidt, who has interest in the neighboring property to the west, at 1803 West Park, and she has no problems of what is being requested by her neighbor.

The Planning Department does not recommend granting a variance to expand or construct a garage to within 20 inches of the property/fence line. If the variance is granted, the Planning Department does have proposed recommendations, and conditions, and these were gone over in detail,

Questions from the Board

Ms. Kostelecky asked again what the reason was in which the Planning Department did not recommend approval of this, and Ms. Hess stated that this is a similar lot size to other lots within the Western Second Addition. It is not unique like other lot cases that we have seen brought before the Board previously, where they are smaller or in a development district that is geared towards a different use. In this neighborhood, it is residential and all house lots are the same dimension. Ms. Kostelecky asked what they are exactly asking for. Ms. Hess confirmed that they want to build within 17-20 inches to the lot line.

Judy Barber asked if this is where the existing garage is? The edge of the proposed new garage is where they are wanting this between 17-20 inches to the lot line.

Mr. Hamming did read a letter from Dr. Ed Miller that is in support of Mr. and Mrs. Wargo and their variance request. **See attachment**

Ms. Kostecky asked if the reason for this variance is just to store a trailer and a boat. This was confirmed.

Applicant Report

Charles and Sandra Wargo, along with their daughter, Christine, were here today to discuss the variance that they are looking at obtaining

Mr. Wargo feels that he has a unique situation. He feels that he wants to do things the proper way and therefore, submitted the request to move forward. He first states that he has numerous photos of the area in which he lives, that are in violation of the setback of the alleys. He sent a couple of these photos. He stated that many of these are brand new structures, and they are all outside of the setback range. He does not know why these have not been addressed when many of them are almost new structures. Mr. Wargo stated that most of these are up his alley and a few other alleys all within the new addition. He states that you could go up and down every alley in the new addition and find a ton of garages and sheds in violation.

His request today is just a 24' x 24' standard sized garage attachment. The additional structure would be of the same structural design as the house and garage that is already there with the same appearance and the same color. He would also be running the same roof across this. The building would be within the existing fence line and would be the same distance from the alley as Dr. Ed Miller's house which is directly across the street. There would be no difference. He did state that Dr. Miller's house, his main front door is on Park Street, so all his setbacks are different than Mr. Wargo's due to the way the property is facing. This is the issue that Mr. Wargo has with his concern. He states that he is unable to use his property due to extraordinary conditions and unique setup to his corner lot which greatly limits his personal use of his property. He states that this restricts his land use rights which are given over 90% to all the landowners in that area. By that, it is primarily because of setbacks and primarily due to his house facing Juniper Street and not Park Street.

He wants to point out that all he wants is approximately 84 sq ft. This is an area less than a closet.

He stated that the setbacks are described in the Municipal Code, Chapter 24-74. They are 15 ft from the front line, 5 ft from the side lines, and 5 ft from the rear. He states that since his house faces Juniper and not Park Street, this is completely different than all the other homes. There are a few of the corner lots that are facing the side streets, but almost 90% of them face Park Street, or Tammany Street on the other side. At this time, Mr. Wargo handed out a picture that he had drawn to identify the land and what he feels is lost due to his house being set sideways and facing Juniper. He states that when this was originally platted, they took 30 ft instead of 15 ft. Every house in the area is set back, 30 ft. This is in complete discrepancy to what Chapter 24-74 states.

Mr. Hamming responded by stating that a setback is a minimum and that a platted development can have a 30-ft setback which they have running along the entire new addition. Mr. Wargo states that when he bought the house, he asked for all the CCNRs and all other documents for the property. The only CCNR on that property is that you cannot build a log home. Mr. Hamming discussed the developmental districts are different than a CCNR, which is for the platted neighborhood development and is not part of the development districts, which are a much broader area.

Mr. Wargo states that the biggest uniqueness of his property is that between his house and 90% of all the other ones, is that he does not only have a 30-ft setback on Park Street, but he also has a 30-ft setback on Juniper. Now what has resulted with that is that his envelope within that lot to be able to build has been shrunk and it has been shrunk by 1000 square feet (20' x 40') on the Park Street side. On the Juniper Street side, he has lost 30 ft, which totals 1,650 square feet. That is 2,650 square feet total on his property, almost 37% of his total property and this is because of all setbacks. He then showed various pictures he had drawn with different setback scenarios affecting him.

Questions from the Board

Mr. Johnston stated that the issue regarding setbacks back in 1950 has nothing to do with the meeting here today and Ms. Kostecky stated that unfortunately the reason for this happening is due to him being on a corner lot. Mr. Hamming just wanted to make a point of clarification in stating that if the house happened to be facing Park Street, you would still have the 5-ft setback for a rear and sides and Mr. Wargo did understand this. He again uses Dr. Miller's property as a reference point. Ms. Kostecky stated that when he bought the property, he knew what it was, and Mr. Wargo stated that he did not know and that it was not noted in the CCNR. The only way that he would have any way of knowing is when he went to do what he is trying to do. Again, all he wants is 84 square feet so he can put an extension on the garage.

Ms. Kostecky asked what would happen if he decreased the proposed garage to adhere to the setback? He states that the problem is adding a 20 ft section. This is too narrow to put vehicles in and the other option is to face this towards the alley. He doesn't have any okay from the County to put a driveway in. To try and put a car into a 20-ft garage, he states, is that there would only be a few inches of clearance on each side because of the wall, the door setback, and the distance between the sides of the wall. He states that he also stands to destroy the drainage as the roof would have to be perpendicular to the existing roof so there is no way to drain this off.

Judy Barber stated that she understands him to be saying that he feels his lot is unique due to the amount of land that he has lost with the setbacks, and he states that he is boxed in. He feels that he doesn't have the ability to utilize the land he has like all the landowners around him can. He is paying the same taxes as everyone else, but his utilization of the property has been narrowed into that little box. He has no room to expand. He states that the only room he has within that area is 480 square feet and that is it,

Mr. Johnston asked how far he could build to Juniper Street. Ms. Hess stated up to 15 ft. The developmental setback is 15 ft, and the 30 ft is the historic nature of the original platted neighborhood. He stated that Mr. Wargo can build up to 15 ft. On that note, Mr. Wargo then stated that the only place where he has room to make this work on his property at the lowest cost is to go out to Park Street, and the setback for his side would be 5 ft. He doesn't feel that the County or the neighbors would really want him to do that and destroy the look of the street.

He once again states that if you go up and down the alley, you will find many garages in violation. Mr. Johnston stated that the photos that Mr. Wargo is showing us today are the reason why we have the Board of Adjustment, and the Development District rules are in place to prevent this from occurring again. Mrs. Wargo stated that many of these garages were built after 1993 when the new rules were made and why did they get to do that. Mr. Johnston stated that we are not discussing those properties at this time, that we are discussing only their property and Mrs. Wargo stated that she only wants this to be fair. She doesn't understand why they could do it and they can't. Mr. Wargo continues to state that he cannot utilize his property as 90% of the folks in that subdivision are allowed to use due to him being on two streets.

Ms. Kostecky asked what the purpose of this new garage will be for? He states that he will house his boat and trailer in this. He states that these are only 8 ft wide. She asked why he couldn't make it longer and come out towards the east. He states that he needs the width as the door is 20-ft, and if you are trying to purchase doors, you would need a 16-ft door. Mr. Johnston asked about the wall between the proposed garage and the existing garage and whether it will remain. Mr. Wargo stated that he plans to just attach onto this. Basically, the wall in question will remain. He also states that he will have to cut all standard sized boards, doors, etc. down to below standard and that this will cost him a significant amount of money. He feels that he is not being treated fairly because of all the setbacks imposed on him. Ms. Kostecky then states that he is not the only one with this problem.

The next question was regarding the fence, and he stated that his plan is to remove the fence where the garage will be, which would allow him to remove bushes from the County land and not obstruct the view of the alley. His only issue then is that the gas line runs underneath the bushes so this will need to be hand dug. He is

willing to pay the extra expense to get rid of them and to clean up the alley. He says that he will need to leave some of the fence and attach to the garage. This would only be roughly 17 inches which is not much.

Ms. Kostecky asked how we determine what is the property line of the property. Mr. Hamming states that there is no recent survey, but that he did visit on site and that the alley was measured and that it is a pretty good indicator with where the utilities are running measuring six inches from there and then measuring 20 ft across the alley which is the right of way for an alley, and it was right on the fence line.

Ms. Kostecky then asked about the gas and water pipes being under this portion of garage that he is proposing to build. Mr. Wargo states that the gas line runs along the other side of where he is planning on building underneath the bushes. He also states that he is hampered by this as it does go down the length of the house.

Ms. Kostecky asked if the fire department weighed in and Ms. Hess stated that they did ask the fire department for comment and that they did not hear anything back from them.

Mr. Johnston stated that one of the reasons that there are setbacks are so that one can see around corners. Mr. Hamming stated that this is a prevailing reason. He then stated that he thinks that the fence in question also can obstruct the view of the alley. He states that if the fence is removed and the building is further back, then this would also improve the vision triangle of the alley. He states that the reason the fence was built out as far as it was because everyone was cutting across his driveway and going up the alley. He states that he cannot even really park it in the driveway for fear of getting hit. Folks did hit the boat trailer once and there was no boat on this, but there was significant damage done. He ended up having to order a whole new trailer and had to pray that the water level didn't significantly go down or freeze up at the lake while he waited for this to arrive.

Ms. Kostecky asked whether he could move forward down the driveway and towards Juniper, but he states that this just makes a deeper garage and doesn't help him park more vehicles in it. He states that it would still have the width problem. He also doesn't want to take the driveway out and create more of a vision problem.

At this time, more extensive conversation took place regarding all the issues stated above. It seemed like much of the conversation was repeated multiple times. There was more review of the pictures that Mr. Wargo had drawn out and discussion regarding the appearance of the garage when completed.

Public Comment

None

Motion

Motion is made to approve the variance which grants relief from the requirement of a 5-foot setback from the side lot line within the LDRD; seconded by Judy Barber. Motion denied 2-1.

New Business

None

Miscellaneous

Matters from the Staff

Carl Hamming just wanted to comment that part of the by-laws stated that there needs to be a report given to the Commission regarding the variances heard and the decisions that were given. Typically, this is the chairperson who makes this report so Ms. Kostecky will come in to discuss this and get this set up with either Mr. Hamming or Ms. Hess.

Matters from the Board

None

Public Comment

None

Next Meeting

TBA

Adjournment

Meeting was adjourned at 5:10 p.m.

Final Minutes Approved

Respectfully Submitted,

Carlye Hansen

ADLC Planning Department Secretary

Attachment: Guest Sign-In List

Letter from Dr. Ed Miller

DRAFT

Board of Adjustment
Anaconda-Deer Lodge County
October 7th, 2021
Community Service Building
3rd Floor Conference Room
4 p.m.

Sign-In Sheet

Are you an
 attorney or legal
 representative?

Name <u>Sandra Huttumel Wargo</u>	Address <u>206 Juniper</u>	E-Mail Address <u>sandy.j.w@gmail.com</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Name <u>Charles Lloyd Wargo</u>	Address <u>206 Juniper</u>	E-Mail Address <u>starwarschuck@gmail.com</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Name <u>Kristen Jean Wargo</u>	Address <u>509 Chestnut</u>	E-Mail Address _____	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Name <u>Judy C. Barber</u>	Address <u>400 E 4th St #2</u>	E-Mail Address <u>j.barber@hotmail.com</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Name <u>Donna Hostelcky</u>	Address <u>1360 N. Cable Rd</u>	E-Mail Address _____	Yes <input type="checkbox"/> No <input type="checkbox"/>
Name _____	Address _____	E-Mail Address _____	Yes <input type="checkbox"/> No <input type="checkbox"/>
Name _____	Address _____	E-Mail Address _____	Yes <input type="checkbox"/> No <input type="checkbox"/>
Name _____	Address _____	E-Mail Address _____	Yes <input type="checkbox"/> No <input type="checkbox"/>

To Anaconda – Deer Lodge County Board of Adjustments:

My home is 1719 Park which is across Juniper Street from the Wargo's home. I have reviewed the proposed variance which Chuck and Sandy Wargo has requested and the structure they would like to build. I have no problems or concerns as to their variance proposal. I feel it will have no negative effect on me or the neighborhood.

Ed Miller

A handwritten signature in cursive script, appearing to read "Ed Miller".