

**WHITLEY COUNTY ADVISORY PLAN COMMISSION
STAFF REPORT**

24-W-SUBD-3 PRIMARY PLAT APPROVAL
Brooks Langeloh
West Loon
2740 W. 700 North

**FEBRUARY 21, 2024
AGENDA ITEM: 1**

SUMMARY OF PROPOSAL

			<u>Code Minimum</u>	<u>Proposed Minimum</u>
Current Zoning:	LR, Lake Residential			
Area of plat:	0.64 acres	Lot size:	10,000 sq. ft.	8,720 sq. ft. (Lot 2)
Number of lots:	2 lots	Lot width:	70'	68.25' (Lot 2)
Dedicated ROW:	0.17 acre	Lot frontage:	50'	70' (Lot 1)

The petitioner, owner of the subject property, is requesting preliminary plat approval for a two-lot subdivision to be named "West Loon." The proposed plat is located on the northwest corner of 700 North and Brown Road in Section 36 of Etna-Troy Township, with an address of 2740 W. 700 North. The parent property is currently improved with a dwelling and outbuilding.

The purpose of the proposed plat is to split the existing outbuilding from the residence for sale to separate owners. Platting is required due to previous splits from the 1979 parcel and the sizes of the proposed lots. Being zoned LR already, no rezoning is required.

The property has sanitary sewer available. The proposed plat does not comply with the minimum lot size and lot width, as shown in the table above. The petitioner has already filed variance requests for these deficiencies, as well as a variance for the legal nonconforming setbacks. So, approval of this plat would need to be conditioned upon the approval of the variances.

UTILITY AND REVIEW COMMENTS

Comment letters received (as of date of staff report)

Electric	X	Health	X	Cable TV		Parcel Cmte.	X
Gas		Co. Engineer		Sanitary Sewer	X		
Telephone		SWCD	X	Water	NA		

Being an improved site with existing utilities, few comments were received as of the time of writing.

As proposed, a 35' wide ROW would be dedicated along 700 North, while a 30' wide ROW would be dedicated along Brown Road. Both roads are shown on the Transportation Plan as collector roads with future 70' rights-of-way. This reduction in width for Brown Road requires a waiver, discussed below.

10' drainage and/or utility easements are shown on the perimeter of the lots. The existing outbuilding encroaches into the easement and the 10' side yard setback. This is another legal nonconformance that may be addressed as part of the requested variances.

No covenants have been submitted, which is not unusual for two-lot plats.

Anti-funneling code application

A neighboring property owner made staff aware of an existing lake access easement that applies to this property. In summary, the owner of this property and two other adjacent owners were granted a 10' wide lake access easement located between 7054 and 7040 Brown Road.

Section 5.3.1 of the Zoning Code requires that Lake Access Developments maintain a minimum shoreline of 50' for the first residential unit, 25' for the second, and 15' for each additional unit. The definition of a Lake Access Development includes "any development that...through the grant of an easement...the right of

owners in the development to use a Waterfront Lot for access to the waters of any Public Freshwater Lake and that requires any type of approval by the BZA or Plan Commission.” With the existing access easement in place, this proposal is defined as a Lake Access Development.

Since the proposed plat creates a new lot that could be potentially used for a residence, the code requires a minimum of 75’ of shoreline (50’ for the first lot and 25’ for the second), which is noncompliant.

However, if the petitioner were to commit that at least one of the two lots no longer had lake access, there would be no increase in waterfront users, the legal nonconforming situation would remain unchanged, and the code would not require any additional shoreline.

WAIVER REQUESTS

Indiana Code 36-7-4-702(c) states that standards of the Subdivision Code may be waived at the discretion of the Plan Commission, if the applicable standards of the zoning code are met (or variances obtained). Section 104 of the Subdivision Code states, “where, owing to special conditions, a literal enforcement of this ordinance would result in unnecessary hardship, the Commission may make such reasonable exceptions thereto as shall not be contrary to the public interest.” Thus, the Commission should make findings specifically regarding the request waiver of the Code standards.

Dedicated right-of-way reduction

Section 503.2 of the Subdivision Code requires that “whenever a dedicated or platted portion of a street or alley exists along a boundary of the tract being subdivided, the remainder of that street or alley shall be platted to the prescribed width within the proposed subdivision.”

The Transportation Map of the Comprehensive Plan designates Brown Road as a minor collector, which is to have a 70’ right-of-way width (or 35’ ½-width). So, the proposed 30’ ½-width for Brown Road is deficient.

Suggested waiver findings

The following are staff’s suggested findings for the requested waiver(s):

1. Brown Road connects 700 North to Buckles Road and 250 West, making it a through road. It is not planned to connect any farther.
2. The width of existing rights-of-way along Brown Road vary but are generally between 40’ and 50’.
3. The existing right-of-way adjacent the subject property is approximately 35’ wide, of which 15’± is on the west side of the road centerline.
4. The existing residence is 50’± from the road centerline, or 35’± from the existing right-of-way line, which is the minimum front setback for LR zoning.
5. Dedication of any additional right-of-way will create a nonconforming front setback.
6. Standards for new rights-of-way for subdivision roads are 50’; local roads are 60’; and collector roads are 70’.
7. The existing right-of-way for Brown Road at the subject property is less than the minimum standard for any class of road. The dedication of 35’, the standard called for by the code, would create a right-of-way of 55’, while dedication of 30’ would create a right-of-way width of 50’.
8. The dedication of any additional right-of-way width creates an unnecessary hardship by creating a front setback encroachment for the existing dwelling.
9. The proposed 30’ dedication would reduce the resulting front setback encroachment while adding sufficient width to create a right-of-way comparable to that required for new subdivision streets.

REVIEW CRITERIA

Subdivision primary plats are reviewed for compliance with the standards of Subdivision Control Ordinance and the Zoning Code. Staff finds that the proposed primary plat appears consistent with the standards, with the following condition(s):

1. At least one of the proposed lots shall no longer be a grantee of the access easement recorded as Instrument #1991050245. The petitioner must record an instrument documenting this rescission, or similar documentation.
2. The requested waiver of right-of-way width is granted as presented, with the suggested findings.
3. Variances for the lot area and lot width must be obtained.
4. Secondary plat approval delegated to the Plan Commission Staff.

Date report completed: 2/14/24

PLAN COMMISSION RECORD OF ACTION

Motion: _____ By: _____ Second by: _____
 Approve _____
 Approve w/conditions _____
 Deny _____

Vote:	Baker	Banks	Drew	Emerick	Green	Hodges	Johnson	Kurtz-Seslar	Wolf
<i>Yes</i>									
<i>No</i>									
<i>Abstain</i>									

