



CITY OF FRANKLIN

DEPARTMENT OF PLANNING & ENGINEERING

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BZA Staff Report

To: Board of Zoning Appeals Members
From: Alex Getchell, Associate Planner
Date: August 28, 2014
Re: **Case ZB 2014-11 (UV & V) | Julie Stewart | 383 E. Madison St.**

REQUEST:

Case ZB 2014-11 (UV & V)...383 E. Madison Street. A request for a modification of commitments from the approval of ZB 2013-12 (UV & V), to allow modifications to commitments B, D, and E, to allow three (3) parking spaces, a six (6) sq. ft. projecting sign off the front porch, and a wall sign six (6) sq. ft. in size on the rear wall of the building, in the Residential: Traditional Neighborhood (RTN) zoning district. The property is located at 383 E. Madison Street.

The original requests for ZB 2013-12 (UV & V) were for a use variance of the City of Franklin Zoning Ordinance Article 3, Chapter 10 to allow the operation of a variety store and development standards variances from Article 7, Chapter 10 and Article 7, Chapter 16 as they relate to off-street parking requirements:

1. Article 7.10 Part 1(A)(3) – Parking stall size less than 10' x 20'
2. Article 7.10 Part 3(A)(1) – Parking areas not required to be paved/concrete or striped
3. Article 7.10 Part 3(A)(4) – Parking area not to be curbed
4. Article 7.10 Part 3(A)(5) – Less than minimum number of required parking spaces
5. Article 7.10 Part 3(D) – No bicycle parking
6. Article 7.16(E) – No perimeter parking lot landscaping
7. Article 7.16(F) – No interior parking lot landscaping

ZB 2013-12 (UV & V) was approved September 4, 2013, with the following commitments made by the petitioner (requesting modification to B, D, and E):

- a. Existing garage will be demolished.
- b. Five parking spaces, 9 ft. in width will be provided consistent with site plan submitted.**
- c. Parking area will be gravel.
- d. No exterior signage will be provided for the business.**
- e. Signage directing patrons between the two businesses (subject property & Salvage Sisters) will be provided interior to the businesses only.**
- f. Landscaping and the proposed walkway meeting the approval of the city will be provided.
- g. The second floor of the structure shall remain vacant.
- h. Change of use of the structure would meet all building code requirements for the change of use.

PURPOSE OF STANDARD:

The "RTN," Residential: Traditional Neighborhood zoning district is intended to ensure the continued viability of the traditional-style neighborhoods in existence on the effective date of the Zoning Ordinance (May 10, 2004). This district should be used to maintain contextually appropriate setbacks and standards in its traditional neighborhoods.

CONSIDERATIONS:

Approvals & Current Use

1. Since the approval of ZB 2013-12 (UV & V) in September 2013, the petitioner has been operating a variety store, previously called 'Rust and Roses,' which sells recycled, repurposed, and reclaimed items from the property at 383 E. Madison Street. To date, the petitioner has not satisfied all of the commitments agreed to with the original approval and is returning in order to request modifications to three commitments: B, D, and E.
2. In addition to the number of parking spaces provided being deficient, staff was recently informed that the petitioner may be occupying the second floor, contrary to commitment "G", and a change of use has not been filed with the State of Indiana Department of Homeland Security Division of Fire and Safety Plan Review Branch (commitment "H") for the change from a two-dwelling use, to a retail use. Occupying the second floor, with either a retail use or a dwelling, would require additional on-site parking spaces be provided; over and above the six (6) currently required for the business by occupying just the first floor with one employee. (See consideration (6.)(a.) below for explanation)
3. A variety store is defined as "a retail establishment that sells a multitude of consumer goods" and is classified as a Retail Use (Medium Scale) land use per the City of Franklin Zoning Ordinance. Retail Use (Medium Scale) is a non-permitted use in the "RTN," Residential: Traditional Neighborhood zoning district; however, the use was approved by use variance by the BZA.
4. A variety store is listed as a permitted use in three of the four Mixed Use zoning districts: MXD (Mixed Use: Downtown Center), MXC (Mixed Use: Community Center), and MXR (Mixed Use: Regional Center). It is not listed as a permitted use or special exception in the MXN (Mixed Use: Neighborhood Center) zoning district.

Parking Requirements

5. Article 7, Chapter 10 of the Zoning Ordinance states "Any use which is nonconforming in the zoning district in which it is located or is permitted by special exception or variance shall provide parking which is consistent with the use and the standards for the zoning district in which the use is permitted by this Ordinance. In no case shall the number of parking spaces required for non-conforming uses or those permitted by special exception or variance be solely based on the standards for the district in which they are located. The Board of Zoning Appeals shall specify the number of parking spaces for all uses permitted by special exception or variance consistent with the intent of this Chapter."
6. According to Article 7.10:
 - a. A minimum of 1 off-street parking space is required for every 300 sq.ft. of gross floor area of the variety store (rounded to the nearest complete space) plus one (1) space for each employee working on the largest shift. (1st floor = 1,532 sq.ft. 1 employee)
 - b. Parking spaces shall be provided on the same lot for which they are required.
 - c. Minimum parking stall size is 9' x 18' and must be striped.
 - d. Each parking space and interior drive must be paved with asphalt or concrete.
 - e. A minimum of 2 bicycle parking spaces shall be provided.

7. Based on the square footage of the proposed variety store and total number of employees, a total of six (6) parking spaces would be required to be located on site to comply with the Zoning Ordinance regulations. Approval of ZB 2013-12 allowed the petitioner to vary from this standard, to have just five (5) parking spaces.

Modification of Commitment “B”- Parking

8. Petitioner now seeks to reduce the number of parking spaces further, to have three (3) parking spaces, due to the original site plan being unclear, incomplete, and not matching the true conditions of the property. The original site plan indicated there was 46’ of space for five (5) parking spaces, 9 feet in width; however, the site plan did not include a fence on the property, buildings on adjacent properties situated on the property line, nor the location of a power pole, which effectively reduces the gravel parking area to approximately 30’ in width.
9. The petitioner has demolished the garage and provided a gravel parking surface approximately 30’ in width and 36 feet in depth from the alley. See aerial photo on page 6 and attached site plan.
10. The subject property is immediately adjacent to MXD zoned properties to the south. However, due to the property’s location, vehicular traffic must travel through the residential neighborhoods to get to the property and then uses the alley in order to utilize the off street parking area. There is no direct access from Jefferson Street as Yandes Street is one-way south.
11. In 1998, the property owner to the east (399 E. Madison Street) filed a request for a use variance to allow an additional dwelling unit for a total of 4 dwelling units. The use variance was not approved by the BZA. In 2010, the property owner to the west (365 E. Madison Street) filed a request for a special exception to add an additional dwelling unit for a total of 3 dwelling units. The special exception was not approved by the BZA. Discussion was held regarding the need for off street parking in both cases.

Modification of Commitments “D” and “E” - Signage

12. The petitioner is also requesting to modify/remove the previously approved commitments (D and E), that no exterior signage will be provided for the business. Petitioner is requesting the following:
 - a. One (1) projecting sign off the front porch, six (6) sq. ft. in size; and
 - b. One (1) wall sign on the rear wall of the building, six (6) sq. ft. in size.
13. Signage in residential districts is limited to six (6) sq. ft. in sign face area and four (4) feet in height.

Comprehensive Plan

14. According to the 2013 Comprehensive Plan, Land Use Plan, this area is identified as Core Residential. “The core residential areas of Franklin are those which are immediately adjacent to the downtown. These neighborhoods feature a majority of Franklin’s historically significant homes. Land uses in these areas should be dominated by a diversity of single family homes, and also include neighborhood-scale churches and schools. Historically significant duplexes, multi-family dwellings, and accessory residences which contribute to the character of the area should be maintained and enhanced. The conversion of homes to apartments and businesses should be generally prohibited and otherwise strictly regulated. The most significant land use relationships in this area are between the area’s residential and non-residential uses, and between the area as a whole and the downtown. The area’s mixed uses should continue to support the human-scale features and walkability of the neighborhood. Uses of all types should be of a scale and setback that contribute positively to the character of the area. The strong pedestrian connections to the downtown provided by the area’s sidewalks should be maintained and enhanced. Any redevelopment, infill construction, or renovation in these areas should respect and support their unique character. Elements of that character include vehicle access provided by alleys, front porches and small front yard setbacks, street trees, and a diversity of housing styles and sizes.”

Zoning Ordinance

- 15. The definition of a practical difficulty, according to the 2004 City of Franklin Zoning Ordinance is: A difficulty with regard to one's ability to improve land stemming from regulations of this Ordinance. A practical difficulty is not a "hardship," rather it is a situation where the owner could comply with the regulations within the Zoning Ordinance, but would like a variance from the Developmental Standards to improve his/her site in practical manner. For instance, a person may request a variance from a side yard setback due to a large tree that is blocking the only location that would meet the Development Standards for a new garage location.
- 16. According to Article 2.5: A special exception or variance ceases to be authorized and is expired if the obtaining of an Improvement Location Permit, or the execution of the approval has not been completed within 1 year of the date the variance or special exception is granted. The variance or special exception shall also expire if the approved construction has not been completed and approved by the Planning Director as being consistent with all written commitments or conditions, the requirements of this Ordinance, and all applicable permits within 2 years of the date the approval is granted.
- 17. The surrounding zoning and land uses are as follows:

Surrounding Zoning:

North: RTN, Residential: Traditional Neighborhood
 South: MXD, Mixed Use: Downtown Center
 East: RTN, Residential: Traditional Neighborhood
 West: RTN, Residential: Traditional Neighborhood

Surrounding Land Use:

North: Residential (4 & 1 family) & storage
 South: Retail
 East: Multi-family dwelling
 West: Two-family dwelling

CRITERIA FOR DECISIONS – USE VARIANCE:

(The petitioner will need to address the Criteria for Decisions in their presentation**)**

In taking action on all use variance requests, the Board of Zoning Appeals shall use the following decision criteria, consistent with the requirements of the Indiana Code. The Board may grant a use variance of this Ordinance if, after a public hearing, it makes findings of facts in writing (consistent with IC 36-7-4-918.4) that:

DECISION CRITERIA – USE VARIANCE

- 1. *General Welfare: The approval (will or will not) be injurious to the public health, safety, morals, and general welfare of the community.*

Staff Finding:

The approval of the use variance with the proposed modifications of commitments will be injurious to the public health, safety, or general welfare of the community, as the proposal compounds the current parking situation by increasing the need for on-and-off-street parking. The Board may wish to query the petitioner on how the parking needs of customers have been met, and what overall impact the proposal has had on parking, traffic patterns and uses in the general vicinity.

- 2. *Adjacent Property: The use and value of the area adjacent to the property included in the variance (will or will not) be affected in a substantially adverse manner.*

Staff Finding:

A variety store with the proposed modified commitments, reducing the number of parking spaces and adding signage to a residential area, within a residential structure, and which has residential uses on three sides would negatively impact the adjacent properties. Residents in the general vicinity, and their guests, will have to contend with a retail use and daily customers for on-street parking, in a residential neighborhood that would otherwise only have traffic localized to the residences on that block.

3. **Practical Difficulty:** *The strict application of the terms of the ordinance (will or will not) result in a practical difficulty in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.*

Staff Finding:

The strict application of the ordinance will not result in a practical difficulty as the petitioner may continue to use the property as a two-family structure. Staff finds that the practical difficulty of the property is based on the perceived reduction of, or restriction on, economic gain. The petitioner should explain how approval of this variance will result in a practical difficulty in the use of the property.

4. **Unnecessary Hardship:** *The strict application of the terms of this Ordinance (will or will not) constitute an unnecessary hardship as they are applied to the property for which the variance is sought.*

Staff Finding:

Staff finds that the strict application of the terms of the Ordinance will not result in an unnecessary hardship as the petitioner may continue to use the property as a residential structure.

5. **Comprehensive Plan:** *The granting of the variance (does or does not) interfere substantially with the Comprehensive Plan.*

Staff Finding:

The granting of use variance does interfere with the Comprehensive Plan as it states that “historically significant duplexes, multi-family dwellings, and accessory residences which contribute to the character of the area should be maintained and enhanced. The conversion of homes to apartments and businesses should be generally prohibited and otherwise strictly regulated.”

STAFF RECOMMENDATION – USE VARIANCE

Based on the written findings above, staff recommends **denial** of the petition.

CRITERIA FOR DECISIONS – DEVELOPMENT STANDARDS VARIANCES:

(The petitioner will need to address the Criteria for Decisions in their presentation**)**

In taking action on all special exception and variance requests, the Board of Zoning Appeals shall use the following decision criteria, consistent with the requirements of the Indiana Code. The Board may grant a special exception and a variance from development standards and limitations of this Ordinance if, after a public hearing, it makes findings of facts in writing (consistent with IC 36-7-4-918.5) that:

DECISION CRITERIA – DEVELOPMENT STANDARDS VARIANCES

1. **General Welfare:** *The approval (will or will not) be injurious to the public health, safety, morals, and general welfare of the community.*

Staff Finding:

The approval of the variances, with the proposal to reduce the required parking spaces to three on-site spaces, will be injurious to the public health, safety, morals or general welfare of the community. The requirement of the Zoning Ordinance that use variances meet the minimum parking requirements is intended to ensure that the traffic and parking associated with the use is provided on site and reduces the impact on the adjacent properties. Furthermore, the location of the parking in the rear of the business results in an increase of vehicle traffic through the narrow alley.

- 2. Adjacent Property: The use and value of the area adjacent to the property included in the variance (will or will not) be affected in a substantially adverse manner.*

Staff Finding:

The approval of this variance has had an adverse effect on adjacent properties due to the lack of parking, and customers and residents contending for parking spaces on the street. The petitioner should explain how approval of this variance will not adversely affect the adjacent properties, near and long-term. With the assumption that the business will thrive and grow, it is likely any increase in customer traffic will affect neighboring properties in an increasingly adverse manner.

- 3. Practical Difficulty: The strict application of the terms of the ordinance (will or will not) result in a practical difficulty in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.*

Staff Finding:

The strict application of the ordinance may result in a practical difficulty as it is not possible to add enough parking spaces to meet the requirements of the Zoning Ordinance for a variety store (retail use; medium scale); however, the Zoning Ordinance requires any use approved by use variance or special exception to provide the required number of parking spaces, to prevent the use from becoming a nuisance to neighboring properties. Additionally, the petitioner may continue to use the property as a residential use with the existing parking available. Staff finds that the practical difficulty of the property is based on the perceived reduction of, or restriction on, economic gain. The petitioner should explain how approval of this variance will result in a practical difficulty in the use of the property.

STAFF RECOMMENDATION – DEVELOPMENT STANDARDS VARIANCES

Based on the written findings above, staff recommends **denial** of the petition.

Bird's Eye View from South:

