



CITY OF FRANKLIN

DEPARTMENT OF PLANNING & ENGINEERING

70 E. MONROE STREET › FRANKLIN, INDIANA 46131 › 877.736.3631 › FAX 317.736.5310 › www.franklin.in.gov/planning

BZA Staff Report

To: Board of Zoning Appeals Members
From: Department of Planning & Engineering Staff
Date: October 23, 2015
Re: Termination of Case ZB 2013-11 (UV & V) | Don's Auto Sales

APPROVALS:

On October 2, 2013, the City of Franklin Board of Zoning Appeals conditionally approved **ZB 2013-11 (UV & V)**, a Use Variance from the City of Franklin Zoning Ordinance Article 3, Chapter 5 to allow auto sales and a Developmental Standards Variance from Article 5, Chapter 4 to allow the outdoor display of merchandise in the Residential: Rural (RR) and Gateway Overlay (GW-OL) zoning districts. The property is located at **1195 S. US Hwy 31**, which is located within the extraterritorial area ("Buffer Zone")

CONDITIONS/COMMITMENTS OF APPROVAL:

After a public hearing, where Board members heard the petitioner's proposal, remonstrators' concerns for the proposal, and the petitioner's verbal commitments, the Board approved the Use Variance and Developmental Standards Variance with the following conditions and commitments agreed to by the petitioner:

(See Exhibit 1: BZA Minutes 10/2/2013 Meeting; Exhibit 2: Findings of Fact; Exhibit 3: Approved Site Plan)

- a. All parking areas and interior drives will be paved/concrete.
- b. The vehicle display parking spaces and additional parking spaces shall be identified by the appropriate pavement markings consistent with the attached site plan.
- c. A maximum of 13 vehicles shall be on display at one time and shall be parked within the delineated parking spaces.
- d. The interior drives shall be marked with appropriate pavement markings indicating one-way traffic.
- e. The operation of the produce market would cease.
- f. No additional outdoor lighting would be provided.
- g. No additional signage would be provided.
- h. Three (3) trees consistent with the site development plan will be provided.
- i. Property will be paved in areas not already paved.
- j. The legal non-conforming use of the produce stand would be relinquished.
- k. There will be no auto repair on the property.
- l. There will be no sales of any other type on the property.
- m. The existing sign face would be changed but the structure will remain in its current location with no additional lighting added.

REQUEST TO CONSIDER TERMINATION:

Please regard the following information and enclosures (*Exhibits 1 through 16*) as evidence by Planning Department staff that grounds for termination exist, in regard to ZB 2013-11 (UV & V).

BOARD OF ZONING APPEALS ADMINISTRATION:

According to Article 2, Chapter 5 of the City of Franklin Zoning Ordinance, the Board of Zoning Appeals has the authority to revoke a variance or special exception, under the following situations:

- L. Termination:** A variance or special exception may be terminated by the Board of Zoning Appeals under the following procedure:
1. **Public Hearing:** Upon determination by the Planning Director that possible grounds for termination exist, the matter shall be placed on the Board of Zoning Appeals agenda for a public hearing. The Planning Director shall notify the applicant of the hearing via Certified Mail a minimum of 10 days prior to the hearing.
 2. **Grounds for Termination:** At the public hearing the variance or special exception shall be revoked if a finding is made by the Board that one or more of the following is true:
 - a. The execution of the approval is not consistent with any requirement of this Ordinance,
 - b. The execution of the approval is not consistent with any condition of approval,
 - c. The execution of the approval is not consistent with any written commitment, or
 - d. The approval was the result of fraud or the misrepresentation of facts.

GROUND FOR TERMINATION (Chronological Order):

1. On October 2, 2013 (*Exhibit 1: BZA Minutes 10/2/2013 Meeting*), John Young, attorney representing Don Bunch (Petitioner), made the following commitments to the Board of Zoning Appeals during the Public Hearing for ZB 2013-11 (UV & V):
 - No illumination will be provided;
 - No unapproved signs;
 - All necessary paving will be provided;
 - **Maximum of 13 cars;**
 - All appropriate parking lines and arrows will be provided;
 - Entrance drive will be to the south;
 - Will plant any additional shrubs or trees as needed;
 - Cars would not be serviced on the lot.These commitments were incorporated into the Board's written findings.
2. On March 11, 2014, five (5) months after the approval of ZB 2013-11, Alex Getchell, Associate Planner for the City of Franklin, sent a letter to Mr. Don Bunch, with a reminder of the Conditions of Approval and the commitments offered as part of the approval. A copy of the Findings of Fact, Conditions of Approval, and approved Site Plan were enclosed. Mr. Getchell allowed Mr. Bunch until **May 2, 2014** to comply with the list of commitments (*Exhibit 4: Letter dated March 11, 2014*).
3. On April 9, 2014, a complaint was filed regarding Don's Autos at 1195 US Hwy 31. The complainant, aware of the BZA approval for only 13 cars for sale at one time, stated she counted **twenty-six (26) cars on the property for sale** (*Exhibit 5: Print-out of complaint*).
4. On May 2, 2014, Joanna Myers, Senior Planner, and Mr. Getchell met with Mr. Bunch at 1195 S. US Hwy 31 to inspect the property for compliance with the approval of ZB 2013-11. At that time, conditions a., b., c., d., h., and i. had not been met. Over the course of the conversation, all parties agreed on a 30 day extension to meet the conditions of approval, due to the cold weather and asphalt plants not yet operating for the year. Meanwhile, the March 11, 2014 letter from Mr. Getchell to Mr. Bunch was seen stapled / thumb-tacked into the wall immediately adjacent to Mr. Bunch's desk and computer throughout the conversation.
5. On May 2, 2014, Mr. Getchell sent a follow-up letter to Mr. Bunch, summarizing the meeting earlier in the day; a copy of the Findings of Fact, Conditions of Approval, and approved site plan were again enclosed. A date for compliance with the conditions of approval of ZB 2013-11 was set for **June 2, 2014**. (*Exhibit 6: Letter dated May 2, 2014*)

6. June 2014: Attached is an Image Capture from Google Street View, marked June 2014 (*Exhibit 7*). In the photograph, **18** vehicles are visible, **13** of which are not located within a delineated parking space, including **3** vehicles parked in the grass.
7. On July 10, 2014, Mr. Getchell completed an inspection of the property for compliance, and took the attached photograph with the corresponding date (*Exhibit 8*). In the photograph, **24** cars are visible, **15** of which are not within a delineated parking space, including **7** vehicles parked in the grass.
8. On July 14, 2014, Mr. Getchell sent a Notice of Violation letter to Mr. Bunch, in regard to the site inspection that occurred on July 10, 2014. The letter provided inspection results and the action required of Mr. Bunch for EACH Condition/Commitment of Approval for ZB 2013-11. The violation letter was explicit in stating all vehicles parked in the grass were to be removed and the total number of vehicles allowed on display had to be 13 or less at all times. Mr. Bunch was given until **July 24, 2014 to comply** (*Exhibit 9: Notice of Violation letter dated July 14, 2014*).
9. 2015: Attached is an Image Capture from Google Maps with an imagery date of 2015 (*Exhibit 10*). The exact date cannot be confirmed; however, the pavement markings can be confirmed, and the number and location of vehicles is clear. In the photo, **21** vehicles are visible, **8** of which are not located within a delineated parking space, including **1** vehicle parked in the grass.
10. On May 12, 2015, Mr. Getchell completed an inspection of the property for compliance, and took the attached five photographs marked with the corresponding date (*Exhibit 11*). Based on the photographs, it appears up to **27 vehicles** were parked on-site, **numerous vehicles** parked outside of delineated parking spaces, vehicles parked in interior drive aisles, plus **8 vehicles** and a **car carrier truck & trailer parked in the grass**. Prior to the inspection, staff received a complaint that Mr. Bunch had added a new wall sign (prohibited by condition “g.”) and new exterior lighting (prohibited by condition “f.”); staff confirmed the new prohibited signage, but was unable to confirm or dismiss the lighting complaint.
11. On May 15, 2015, Mr. Getchell sent a second Notice of Violation letter to Mr. Bunch (via Certified Mail with Return Receipt signed and returned, and via USPS First Class mail), in regard to the site inspection that occurred on May 12, 2015. The letter provided inspection results and the action required of Mr. Bunch for EACH Condition/Commitment of Approval for ZB 2013-11. The violation letter was explicit, again, that all vehicles parked in the grass were to be removed, all vehicles were to be parked within a delineated parking space, and Mr. Bunch was to reduce and maintain the number of vehicles on display to 13 or less at all times. Mr. Bunch was given until **May 25, 2015 to comply** (*Exhibit 12: Notice of Violation letter dated May 15, 2015*).
12. In the May 15, 2015 Second Notice of Violation letter, Mr. Getchell notified Mr. Bunch that the failure to comply with the commitments could result in further enforcement actions, including possible termination of the variance approvals. The letter explained the Board of Zoning Appeals authority to terminate variance requests, the procedure for termination, and the criteria for termination. The letter went on to explain that **“any failure to meet the commitments associated with ZB 2013-11 after May 25, 2015, will result in the variances being brought before the Board of Zoning Appeals for termination.”**
13. Including the May 15, 2015 Second Notice of Violation letter, staff has reminded Mr. Bunch in writing on four occasions, plus a face-to-face meeting, of the commitments associated with the approval.
14. July 2015: Attached are two Image Captures from Google Street View, marked July 2015 (*Exhibit 13*). In the photographs, **20** vehicles are visible, **8** of which are not located within a delineated parking space, including **1** vehicle parked in the grass and a car carrier truck & trailer parked in the grass with an additional 4 vehicles on the trailer.
15. On September 12, 2015, Mr. Getchell completed an inspection of the property and took the attached two photographs with the corresponding date (*Exhibit 14*). In the photographs, **20** vehicles are visible and a car carrier truck & trailer is visible.

16. On September 28, 2015, Robert & Cynthia Hebenstreit, 1360 S. Morton Street, took a photograph from their property, across US Hwy 31, of Don's Auto Sales (*Exhibit 15*). In the photograph, **37 vehicles are visible, numerous vehicles** are parked outside of delineated parking spaces, including **17 vehicles parked on the grass** and a **car carrier truck & trailer** parked on the grass and/or on the interior drive.
17. On October 1, 2015, Robert & Cynthia Hebenstreit, 1360 S. Morton Street, took a photograph from their property, across US Hwy 31, of Don's Auto Sales (*Exhibit 16*). In the photograph, **26 vehicles are visible, numerous vehicles** are parked outside of delineated parking spaces, including **7 vehicles parked on the grass** and a **car carrier truck & trailer** parked on the grass.

STAFF FINDINGS

Staff finds Don Bunch (Don's Auto Sales), two years after his approval, has not only failed to meet the Conditions of Approval for ZB 2013-11 (UV & V), Mr. Bunch has repeatedly failed to comply with the Conditions and his failure merits termination of the variance. The evidence supports this finding for the reasons that include but are not limited to the following:

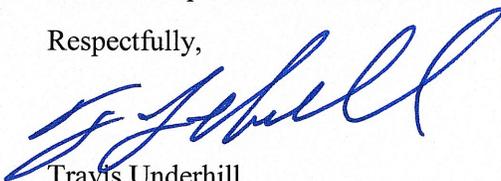
1. At the October 2, 2013 BZA hearing, Mr. Bunch made specific commitments, with which he apparently never intended to comply, and has violated the commitments ever since.
2. Within days of the approval, Mr. Bunch received a copy of the official Findings of Facts and associated Conditions of Approval in the mail.
3. In March 2014, Mr. Bunch received a reminder letter, with copies of the Findings of Facts and Conditions of Approval.
4. On May 2, 2014, Mr. Bunch had a face-to-face meeting with staff in regard to the BZA approvals and associated Conditions of Approval.
5. Shortly after the face-to-face meeting with staff, Mr. Bunch received a follow-up letter from staff, including the Findings of Fact and Conditions of Approval.
6. In July 2014, Mr. Bunch received a Notice of Violation letter, which itemized each Condition of Approval and what specific action was required of him.
7. Finally, in May 2015, Mr. Bunch received a Second Notice of Violation letter, which, again, itemized each Condition of Approval and what specific action was required of him.

More than two years have passed since the approval of ZB 2013-11 (UV & V), and Mr. Bunch continues to knowingly and intentionally violate the Conditions of Approval and the Commitments he made to the Board of Zoning Appeals at the public hearing.

Since the Second Notice of Violation letter (outlined possible termination of ZB 2013-11) was received by Mr. Bunch in May 2015, there is photographic evidence from four separate days, of **24** vehicles, **20** vehicles, **37** vehicles, and **26** vehicles displayed on his car lot. At the same time, Mr. Bunch has also been storing vehicles on a car carrier truck & trailer parked on the grass/interior drive. **Only 13 cars are permitted.**

It is for all the reasons submitted above, that staff respectfully asks the Board of Zoning Appeals to **TERMINATE** the variance approval for ZB 2013-11 (UV & V) based on the criteria that: The execution of the approval is not consistent with any condition of approval, and the approval was the result of fraud or the misrepresentation of facts.

Respectfully,



Travis Underhill
City Engineer, Planning Director



Joanna Myers
Senior Planner



Alex Getchell
Associate Planner