



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: May 26, 2016
Re: Cases ZB 2016-08 (UV & V) | Tracy Bohler

REQUESTS:

Case ZB 2016-08 (UV & V): A request to allow a variance of use for a retail use (medium scale) – vintage home décor with women’s and children’s fashion boutique –, and a request for a developmental standards variance from Article 7, Chapter 10, to allow no customer parking be provided for the proposed retail use, in the RTN: Residential, Traditional Neighborhood zoning district. The property is the second home north of Jefferson Street, on the west side of Home Ave, located at 70 N. Home Ave.

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.

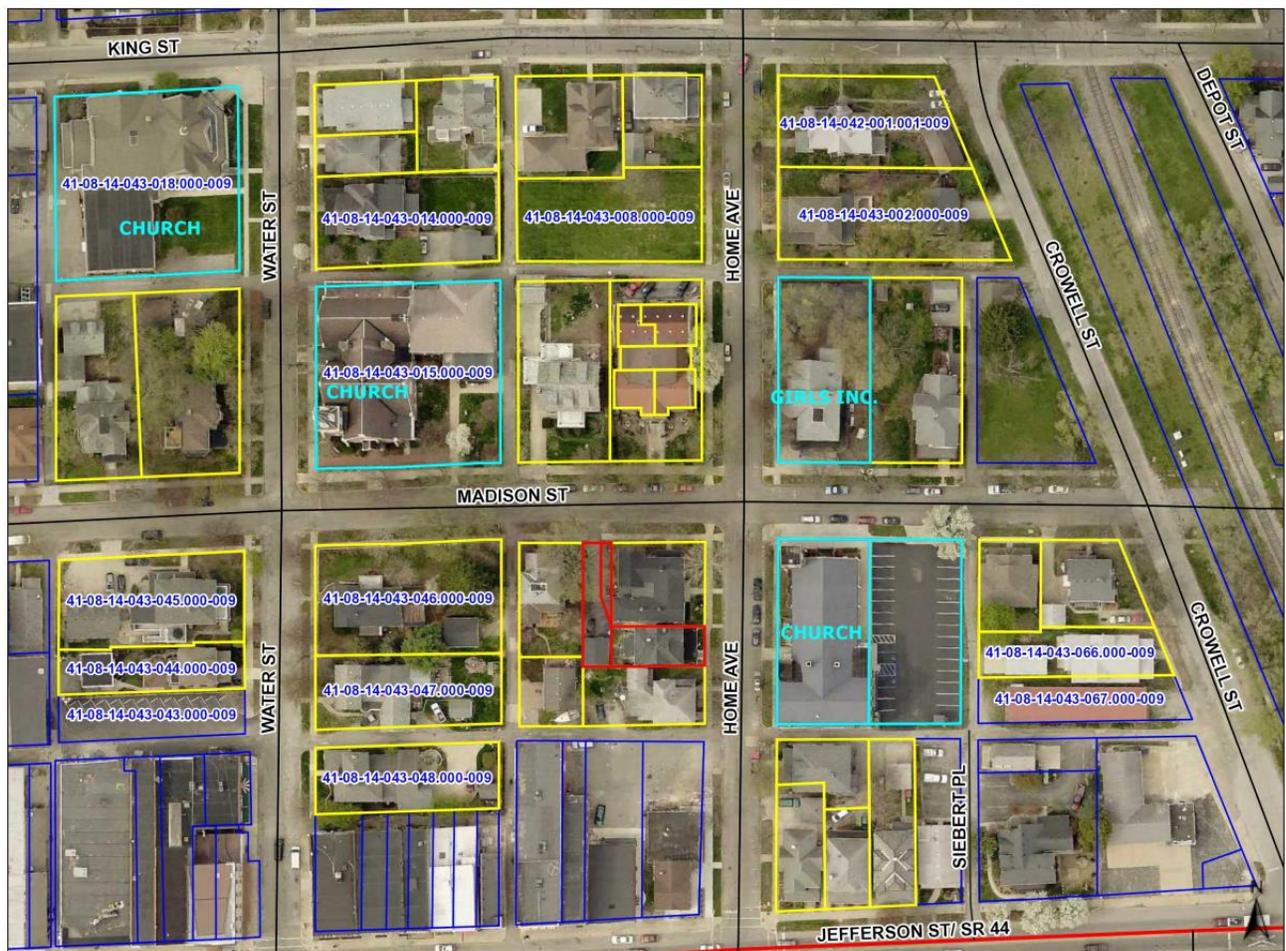
CONSIDERATIONS:

Proposed Use | Variety Store and Women’s & Children’s Fashion Boutique

1. Tracy Bohler (Petitioner) is proposing to convert 70 N. Home Ave, from a 2 bedroom, 1.5 bathroom, single family residence, into a combined vintage home décor retail store and Women’s & Children’s Fashion Boutique retail store.
2. The subject two-story residence, at 70 N. Home Ave, was constructed in 1860, as a single family home, and has remained as such, to this date. Both bedrooms and a full bathroom are located on the second level, with a half bathroom on the first level. A two-car driveway gains access off Madison Street.
3. Petitioner stated they would use the residence for the combined retail use, and would have a maximum of two employees on the largest shift. Petitioner stated the general layout/construction of the home would not be altered, so as to remove any of the features which make it a dwelling (kitchen, bedrooms, bathrooms, etc.), but also stated there would not be anyone living on the property.
4. See petitioner’s attached Letter of Intent [[Exhibit A](#)].
5. Petitioner stated in her Letter of Intent, that she is currently a vendor in “The Rugged Roost,” at 383 E. Madison Street (“the orange house”). The owner of that property, Julie Stewart, previously received use variance and developmental standards variance approvals from the Board, to operate a variety store and be allowed as few as 9 parking spaces.

6. Due to the specifics known about this proposed business, and that the use is not specifically listed in the zoning ordinance Land Use table, staff has determined the proposed use is most similar to the land use category “retail use (medium scale).” More specific uses listed in this category, are “craft/fabric store,” “apparel/footwear store,” “variety store,” and “building finishes shop (paint, carpet, wallpaper, etc.).”
7. Retail Use (Medium Scale) is a non-permitted use in the “RTN,” Residential: Traditional Neighborhood zoning district.
8. A retail use (medium scale) 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.

9. Land use map below:
 - Red boundary: Subject Property
 - Yellow boundary: Residential use
 - Cyan boundary: Church or Girls Inc.



Surrounding Zoning:

North: RTN, Residential: Traditional Neighborhood
 South: RTN, Residential: Traditional Neighborhood
 East: RTN, Residential: Traditional Neighborhood
 West: RTN, Residential: Traditional Neighborhood

Surrounding Land Use:

North: Four-unit, Multi-Family Residential
 Single-family Residential
 South: Two-family Residential
 CMG Family Wellness
 KORN Country
 East: Franklin Gospel Assembly Church
 West: Single-family Residential

Parking Variance Request

10. 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.”
11. According to Article 7, Chapter 10, Parking Standards:
 - A minimum of 1 off-street parking space is required for (rounded to the nearest complete space):
 - Every 300 sq.ft. of gross floor area retail space;
 - Each employee working on the largest shift
 - Each business vehicle stored on-site.
 - At least one (1) space must be reserved for disabled persons for every 25 parking spaces provided.
 - Minimum parking stall size is 9’ x 18’ and must be striped.
 - Each parking space must be paved with asphalt or concrete.
12. Therefore, according to Article 7.10, the number of off-street parking spaces required for the proposed use are as follows:
 - Retail space (1724 sq. ft. – 1st & 2nd Levels): 6 spaces
 - Employees on largest shift (2): 2 spaces
 - Business vehicles (0): 0 spaces
 - Disabled Persons spaces required: 1 spaces
 - **TOTAL SPACES REQUIRED: 8 spaces**
 - **TOTAL SPACES PROVIDED: 2 spaces (Requesting Developmental Standards Variance)**
13. At least one (1) space provided must be reserved for disabled persons, consistent with the requirements of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, Chapter 4.1.2 (5)(a) and all applicable revisions.

Comprehensive Plan

14. The 2013 Franklin Comprehensive Plan, Land Use Plan, identifies this area 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.”

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. According to Article 11.3: Unless otherwise specified by the Board, use variance approvals shall be limited to, and run with the applicant at the location specified in the application. The Board may also limit use variances to a specific time period and a specific use. Use variances shall be invalid if (1) the property conforms with the Ordinance as written or (2) the variance is terminated.

ZB 2016-08 (UV)

CRITERIA FOR DECISIONS – USE VARIANCE [RETAIL USE (MEDIUM SCALE)]:

(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 [RETAIL USE (MEDIUM SCALE)]

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:

Staff finds that approval of the use variance for the proposed retail uses (medium scale), at 70 N. Home Ave., will be injurious to the public health, safety, and general welfare of the community. Approval of the use variance would allow a medium scale retail use to move into a historic “Core Residential” neighborhood. Additionally, approval of the use variance would allow the conversion of a residence constructed in 1860 into a commercial property. The proposed retail use would have residential uses abutting on three of four sides, with the fourth side being a church.

Furthermore, the petitioner would be unable to provide any dedicated parking spaces for their customers. Residents of adjacent dwellings and customers of the proposed business would be forced to compete with each other for the six public on-street parking spaces. Staff understands the property to the south is a two-family dwelling, and the lot to the north is a multi-family dwelling, with four units. The demand for the six on-street parking spaces is already high, even before a retail use is added mid-block. In addition to the dwelling units listed above, there is a four-unit condominium structure on the northwest corner of Home Ave. and Madison Street, and Girls Inc. is located on the northeast corner. The inability of the petitioner to provide any dedicated parking for customers would have a noticeable impact on the public health, safety, morals, and general welfare of the immediate vicinity.

Finally, the 2013 Comprehensive Plan states that the conversion of homes (in Core Residential areas) to apartments or business should be generally prohibited; therefore, approval of the proposal would be contrary to the morals agreed upon, for the protection of the general welfare of the community.

In summation, when you combine the 1.) underlying incompatibility of the proposed use and residential properties immediately adjacent, with 2.) the inability to provide any customer parking, and 3.) the 2013 Comprehensive Plan’s recommendation to ‘generally prohibit’ the conversion of Core Residential homes to businesses, staff finds there would be a substantial adverse effect on the public health, safety, morals, and general welfare of the community.

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:

Staff finds the use and value of adjacent properties would be affected in a substantially adverse manner. Approval of the proposal would allow a commercial retail use to move into an existing home, closely surrounded by other residence uses. In fact, the subject home is within 4-5 feet of the residences located to the north and south. Additionally, approval would expand the antique and vintage market customer traffic (vehicular and pedestrian) further into the Core Residential areas of downtown Franklin. The subject property is 200 feet from Jefferson Street and completely disconnected from other business and retail establishments in the downtown area. If successful, the proposed use would substantially alter the use and value of the remaining historic homes along N. Home Ave. The increased crowds and the associated noise, foot traffic, vehicles coming & going, and meandering of retail customers throughout the neighborhood would have a substantial effect on the use and value of adjacent residential properties. All of which are historic homes constructed prior to 1920, including the subject home, which was constructed in 1860.

Finally, the inability to provide any dedicated parking spaces for customers will substantially affect the use of adjacent properties. The subject home is located mid-block, with a two-family residence adjacent to the south, and a multi-family (four-unit) residence adjacent to the north. The two-family residence has two on-site parking spaces; however, the four-unit residence has no on-site parking. Approval of this proposal would result in an even greater demand for the few public on-street parking spaces available in the area.

3. ***Peculiar Situation: The need for the variance (arises or does not arise) from some condition peculiar to the property involved.***

Staff Finding:

Staff finds the need for the variance does not arise from a condition or situation peculiar to the property. The property is zoned RTN: Residential, Traditional Neighborhood, and single-family residential is a permitted use. The property was constructed in 1860, as a two-bedroom, 1.5 bathroom, 1724 sq. ft., two-story single-family residence, and the property has been utilized as such since construction. Staff finds there is nothing peculiar about the property in question that prevents or discourages the home from continuing to be used as a single-family residence.

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 property is designed and constructed as a single-family residence, is closely surrounded on three sides by other residential uses, and a single-family residence is permitted in the RTN: Residential, Traditional Neighborhood zoning district.

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 would substantially interfere with the Comprehensive Plan. The 2013 Comprehensive Plan Land Use Plan designates this area as a “Core Residential” area. According to the 2013 Comprehensive Plan, Core Residential areas “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.” Therefore, conversion of the subject single-family home to a retail business, directly contradicts and substantially interferes with the 2013 Comprehensive Plan.

STAFF RECOMMENDATION – USE VARIANCE

Based on the written findings above, staff recommends **DENIAL** of the Use Variance petition.

ZB 2016-08 (V)

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 parking space variance will be injurious to the public health, safety, morals or general welfare of the community. The Petitioners are unable to provide any of the customer parking required for the use of the home as a retail business. Residents of adjacent dwellings and customers of the proposed business would be forced to compete with each other for the six public on-street parking spaces. Staff understands the property to the south is a two-family dwelling, and the lot to the north is a multi-family dwelling, with four units. The demand for the six on-street parking spaces is already high, even before a retail use is added mid-block. In addition to the dwelling units listed above, there is a four-unit condominium structure on the northwest corner of Home Ave. and Madison Street, and Girls Inc. is located on the northeast corner. The inability of the petitioner to provide any dedicated parking for customers would have a noticeable impact on the public health, safety, morals, and general welfare of the immediate 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:

Staff further finds that the use and value of the adjacent property will be affected in a substantially adverse manner, as the inability to provide any dedicated parking spaces for customers will substantially affect the use and accessibility of adjacent properties. The subject home is located mid-block, with a two-family residence adjacent to the south, and a multi-family (four-unit) residence adjacent to the north. The two-family residence has two on-site parking spaces; however, the four-unit residence has no on-site parking. Approval of this proposal would result in an even greater demand for the few public on-street parking spaces available in the area. Staff is familiar with a similar situation at 383 E. Madison Street, “The Rugged Roost,” where only three parking spaces were provided, at the back of the building, which was a residence converted to antiques variety store, with multi-family residential immediately adjacent on two sides. Staff has received numerous complaints from neighbors, relating to residents and customers arguing over the on-street parking spaces.

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 existing property is designed appropriately, to meet the parking space requirements for the existing single-family residential use. The petitioner is proposing a retail use on a small residential property, which cannot support the associated parking demands.

STAFF RECOMMENDATION – DEVELOPMENT STANDARDS VARIANCES

Based on the written findings above, staff recommends **DENIAL** of the development standards variance petitions.