CITY OF FRANKLIN

DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT › DEPARTMENT OF ENGINEERING
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BZA Staff Report

To: Board of Zoning Appeals Members

From: Joanna Myers, Senior Planner

Date: June 29, 2011

Re: **Case ZB 2011-11 (V)**

REQUEST:
Case ZB 2011-11 (V)…Ye Ole Country Flea Market. A request for a variance from the City of Franklin Zoning Ordinance, Article 5, Chapter 4 and Article 8, Chapter 3 to allow outdoor display/storage of merchandise and to allow an additional freestanding sign in the Mixed Use: Community Center (MXC) and Gateway Overlay (GW-OL) zoning districts. The property is located at 780 S. US 31, Whiteland.

PURPOSE OF STANDARD:
The "MXC", Mixed Use: Community Center zoning district is intended to provide locations for a variety of small-to-midsized businesses and institutional facilities that serve the entire Franklin-area community. This district should be used alone and in combination with other zoning districts to create areas for community shopping, entertainment, services, and public gatherings.

The intent of the Gateway Overlay District is to require development at the City's entrances that is aesthetically consistent, responsive to development pressures, and proportional to the area's traffic management issues.

CONSIDERATIONS:

1. The petitioner is requesting approval to allow the outdoor display of merchandise to be located east of the structure within the grassed area adjacent to US 31. (See attached site plan.)

2. A Notice of Violation in regard to the outdoor display of merchandise in the Gateway Overlay zoning district, signage, and parking within the grass was issued to the property owner on May 19, 2011.

3. Article 5.4 of the Zoning Ordinance states: "Merchandise may be stored or displayed for sale to customers only in areas immediately adjacent to the primary structure on each property. The storage of outdoor merchandise for sale elsewhere on the property shall be prohibited. This area shall be (1) enclosed by a minimum 8 foot tall wall, or (2) composed of a 3 foot tall base wall topped by wrought iron or tubular steel fencing. No merchandise other than trees shall be visible above the wall or fencing."

4. The petitioner is requesting approval to allow the outdoor display of storage sheds for sale. In addition, the booth tenants have been occupying these sheds and then placing items from inside the sheds on display outdoors. These items are typically household goods, lawn mowers, furniture, etc. (See photo below.)

5. A shed that is being occupied would be classified as an accessory structure and require an improvement location permit and obtain a certificate of occupancy if it is over 120 sq.ft. prior to occupancy.

6. Article 8, Chapter 3: Non-Residential Sign Standards of the Franklin City Zoning Ordinance permits a maximum of one freestanding sign not to exceed 8 feet in height or 80 sq.ft.in area to be located a minimum of 10 feet from the public right-of-way.

7. Article 8.1(B): "Exempt Signs: The following signs are exempt from all provisions of this Ordinance if in compliance with the conditions specified for each. No permit shall be required.

    a. Banners: Banners, provided they are not located in a right-of-way, do not exceed more than 1 per property or business use (whichever is greater), and no single banner exceeds 32 square feet in face area or 2 weeks of use in any 2 month period."

8. The existing legal non-conforming freestanding sign is approximately 18 feet tall and 150 sq.ft. in area.

9. The requested sign is currently 7.5 feet tall and 32 sq.ft. in area. This banner is attached to a wood structure and is currently in violation of both the banner regulations and the permanent sign regulations.

10. Article 13.2 defines Sign, Banner as "a sign with a message applied to cloth, paper, fabric, or flexible plastic, with any such non-rigid material for background."

11. 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.

12. The 2002 Franklin Comprehensive Plan, Land Use Plan, identifies this area as Community Activity Center. "Community activity centers area intended as areas of mixed land uses that provide gathering places and goods and services for the entire community. Community activity centers may include churches, schools, community parks, grocery stores, gas stations, shopping centers, offices, banks and restaurants. Community activity centers may also include residences located on the upper floors of otherwise commercial buildings. Community activity centers are generally located along major streets and at prominent intersections where they are readily accessible by people from throughout the community."

The surrounding zoning and land uses are as follows:

Surrounding Zoning:
North: MXC, Mixed Use: Community Center & GW-OL
South: MXC, Mixed Use: Community Center & GW-OL
East: Whiteland - Commercial
West: RSN, Residential: Suburban Neighborhood

Surrounding Land Use:
North: Christina House
South: Single-family residential
East: Agriculture
West: Single-family residential

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

In taking action on all 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 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:

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 will not be injurious to the public health, safety or general welfare as the minimum interior drive are maintained and parking is provided.

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

Staff Finding:
Adjacent properties to the subject property will be affected in an adverse manner as the outdoor display of merchandise appears to be haphazard and may result in decreased property values.

3. ***Practical Difficulty: The strict application of the terms of the ordinance (will or <u>will not</u>) 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 merchandise may be placed on display inside the existing structure and the existing freestanding sign includes two panels on each side to display messages. The petitioner may also utilize the remaining allowed square footage of signage to install a wall sign. Staff finds that the practical difficulty is based on the perceived reduction of, or restriction on, economic gain. The petitioner should explain how the strict application of the ordinance results in a practical difficulty in the use of the property.

Please Note: The City of Franklin Board of Zoning Appeals may impose reasonable conditions as part of its approval.

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

ZB 2011-11 (V)
Ye Ole Country Flea Market