

MINUTES

City of Franklin, Indiana BOARD OF ZONING APPEALS

May 1, 2019

Members Present

Jim Martin
Phil Barrow
Charlotte Sullivan
Rev. Richard Martin

Chairman
Vice Chairman
Secretary
Member

Members Absent

Brian Alsip

Member

Others Present

Alex Getchell
Joanna Myers
Lynn Gray
Julie Spate

Senior Planner I
Senior Planner II
Legal Counsel
Recording Secretary

Call to Order

Jim Martin called the meeting to order at 6:00 pm.

Roll Call & Determination of Quorum

Approval of Minutes

Lynn Gray pointed out a typo on page 2, paragraph 5, “originally” should be “original.” Phil Barrow made a motion to approve the April 3rd minutes with the correction. Charlotte Sullivan seconded the motion. The motion passed, unanimously 4-0.

Swearing In

Lynn Gray swore en masse anyone planning to speak.

Old Business

New Business

ZB 2019-05 (SE) – 250 N Water St. – Alex Getchell presented the Special Exception request for 250 N Water Street by Danielle Waller. The property is just under one-quarter acre and zoned RTN for Residential Traditional Neighborhood. The Comprehensive Plan Land Use Plan calls for the area to be Core Residential. The Special Exception request is to allow a bed and breakfast facility use in the RTN district. The petitioner is specifically requesting three guestrooms. The owners’ residence would be on the first floor and the three guestrooms on the second floor. They are proposing five parking spaces at the back of the property, with access off the alley running north and south.

Dani Waller, accompanied by her husband Dave, presented an overview of their project. She stated each of the three guestrooms will have its own bathroom. The Wallers will be fulltime residents of the home and will never have a guest staying in the home when they are not in residence. Ms. Waller stated they plan to landscape naturally for the sake of neighbors' privacy, and they will have strict noise restrictions. She stated they will have five asphalt parking spaces with easy access along the back of the property off the alleyways.

Ms. Waller addressed the decision criteria:

General Welfare: She stated they will provide the required parking and it will be their private residence.

Development Standards: She stated they will abide by all regulations and criteria as set forth by the Board of Zoning Appeals and the City of Franklin.

Ordinance Intent: She stated they plan to improve their neighborhood and do not find it at odds with the classification. It will be their private residence and will not be much difference than even some of the multi-family units around them. She stated they will be maintaining it.

Comprehensive Plan: Ms. Waller stated they want to keep it structurally accurate. They plan to have giveaway packets with information on local businesses. She stated they plan to serve breakfasts from food purchased at the Farmers' Market and Johnson County and Indiana grown.

Chairman Martin opened the public hearing by asking if anyone wished to speak for or against the request. No one came forward. The public hearing was closed.

Rev. Richard Martin reported having viewed the property and observed where the parking spaces would be, assessing that there was plenty of room.

There being no further questions or discussion, Chairman Martin requested staff's recommendation.

Mr. Getchell presented staff's recommendation for approval of the petition with the following conditions:

- a. Special exception approval is for an owner occupied bed and breakfast facility use and approval is limited to and runs with the applicant, Danielle Waller, at the subject property, 250 N. Water St.
- b. The bed and breakfast is limited to three (3) guest rooms and the bed and breakfast facility must be occupied by the owner during all overnight guest stays.
- c. A minimum of five (5) parking spaces are required to be provided completely on-site, in accordance with City of Franklin Zoning Ordinance, Article 7, Chapter 10, Parking Standards.
- d. All applicable Federal, State, and Local permits and approvals shall be obtained and sustained in a satisfactory manner; including, but not limited to, compliance with all building, fire, and health codes.

Ms. Waller stated acceptance of these conditions.

Ms. Sullivan made a motion to approve ZB 2019-05 (SE) with staff recommended conditions. Mr. Barrow seconded the motion. The motion passed unanimously, 4-0.

ZB 2019-06 (V) – 405 N Water St. – Joanna Myers presented the request from BCCJ, LLC, for the property located at 405 N Water Street. The current zoning is IBD for Industrial, Business Development. The Comprehensive Plan also calls for this property to be Business Development which is outlined as an industrial property. The request is for a developmental standards variance requesting a portion of the fence to be constructed within a required front yard setback for 200 feet along Cincinnati Street. Martin Place tees into Water Street. Water Street is on the far west end of the southwest corner of the property, and Cincinnati Street runs at a northeasterly direction towards the railroad, which is the south

property line. Ms. Myers stated the minimum setback for the fence along Water Street and Cincinnati Street is 50 feet. The railroad property line is considered side yard, with a side setback. It is not a public right-of-way, and the remainder of the property lines are side and rear setbacks where a fence can be located on the property line. Ms. Myers stated the fence was under construction, which came to the attention of the Franklin Planning Department. A site visit was made by staff, who contacted the property owner, and construction was stopped. She stated a portion of the fence along Water Street appeared to be within the right-of-way, and that portion was removed immediately. Along Cincinnati Street the fence is currently located on the property line. Ms. Myers indicated on a graphic on the PowerPoint presentation where the request being made would be located.

Ms. Gray highlighted the fence's location to be the only variance request. All construction materials are compliant with the zoning ordinance requirements.

Jim Admire, Franklin attorney for BCCJ, LLC, presented, representing Buddy and Connie Carson. Mr. Admire offered background on the property. Their developmental standards variance request is solely along Cincinnati. Mr. Admire went over photographic documentation presented. There is a new entrance to the property at the east end which the clients use primarily. Along Cincinnati there is a grassy area that leads up to the property line. The standards require taking the current fence north 50 feet. The fence is necessary because of what has historically taken place in that neighborhood.

Mr. Admire reviewed the decision criteria.

General Welfare: He stated the variance would not restrict visibility on Cincinnati, Water and Martin. He stated the fence will increase safety by keeping out trespassers and intruders. It eliminates the opportunity to be in the neighborhood.

Adjacent Property: He stated petitioner concessions include slats for the fence facing Martin Place to make it opaque. He stated it will be 50 feet back along Water Street, and they will create a grassy area with trees in that area.

Practical Difficulty: He stated requiring the fence to be 50 feet back along Cincinnati is a practical difficulty, rendering around a third of an acre of ground virtually useless.

Mr. Admire continued by reviewing staff's recommended conditions of approval:

- a. Mr. Admire stated that removing the wooden poles presents a challenge in keeping a level of order, especially with parking, but if required, the client agrees to remove them.
- b. Mr. Admire stated the petitioner agrees with this condition.
- c. Mr. Admire stated the petitioner agrees with this condition.
- d., e. & f. Mr. Admire stated the petitioner does not agree to these conditions due to cost for sidewalk and curb installation when there has never been one previously. They agree it should be done but feel it unfair to impose it on the petitioner.
- g. Mr. Admire stated this condition would be acceptable. Ms. Myers asked Mr. Admire if it was his meaning to amend this condition to the "ground surface area between the existing asphalt of Water Street and the fence," instead of to the public sidewalk the petitioner does not agree to install. Mr. Admire confirmed that to be the case.

Mr. Admire stated the former railroad through this area left behind I-beams that the petitioner will do their best to dig around and fill back in with dirt, but they do not agree to remove a rail line.

Ms. Gray asked if when a variance from a legal non-conforming use is sought, they are required to comply with ordinance requirements. Ms. Myers responded that any time a site improvement is done affecting an area currently non-conforming, that area has to be brought up to city standards.

Ms. Myers announced receipt of a letter, copies distributed to the board members, from Chuck and Nancy Wenning, residents of 510 N. Main Street (Remonstrator Exhibit One).

Chairman Martin opened the public hearing by asking if there was anyone wishing to speak for or against the request.

Remonstrator Bobby Smither, owner of the property next door, stated he is not against the fence. Mr. Smither explained that he was told when the rail line came out he was to receive half of the 10 feet of land. He put things in the area so they wouldn't have to be moved later. Mr. Smither has since discovered that is not true, and he doesn't get any part of the abandoned rail line. He maintains he should have five feet of it. He is disturbed by the fence location, wishing he would have put it over a little bit. Mr. Smither is concerned for his parking area. He is fine with it the way it is but is not sure what will result if grass is put in all the way over. Mr. Smither's neighbor on the other side put a fence up and has blocked his usage of the alley. Years ago the alley between their houses was closed but not the back alley. The neighbor has put a gate up on the back alley on Mr. Smither's property blocking his entrance to the alley, and he wishes he would take it down so that when the petitioner puts up his fence, Mr. Smither can still get cars in and out of the front or back of his property.

Ms. Gray reminded the only issue before the Board at this hearing is the fence location.

Mr. Smither complained of water that comes on to his property during heavy rains, asking if the petitioner could grade the ground so the water goes away from his property.

Ms. Myers added that the alley is not public right-of-way all the way to another public right-of-way. The alley coming off Graham Street is not a public alley for the entire length.

Remonstrator Greg Smith stated he grew up in the neighborhood at 50 E. Adams. He commended the petitioner for improvements made. He expressed his opinion that the sidewalk should be addressed by the city and not the petitioner as there has never been a sidewalk there. Mr. Smith stated he thought the setback should be approved as is.

Resident Amy Heavilin from 14 Martin Place stated she is an avid supporter of historic preservation. She asked for the definition of opaque slats. Ms. Gray explained slats to be plastic strips woven through the chain link fencing.

Laurie Prince, resident of 60 Martin Place and former resident of 86 Martin Place, asked what color the plastic slats would be and if they would only be along Martin Place. Ms. Prince also asked if the variance is not granted without the required modifications, will the petitioner set the fence back to the original setback line without doing any improvements at all.

Mr. Admire responded that the color has not been decided, but it is anticipated to be white, and they welcome suggestions. He further confirmed the fence would be solely along Martin Place for visibility. Ms. Myers answered that if the variance is not approved, and without required modifications, the requirement would be for the petitioner to set the fence back to the required setback line without grass or trees.

Mr. Admire stated if the Board votes and says his client must put in the curb and sidewalk, they would build the fence in compliance with the ordinance, and there would not be slats, there would not be trees, there would not be grass, they would put the fence where the statute allows. He stated that is not a threat, but that it is just the economics.

Laurie Prince asked if there was a landscaping design plan that would be presented in the future if the Board approved everything without sidewalk and variances. Mr. Admire said it hadn't been discussed, but the staff report identifies topsoil and grass for which there is not much design. Mr. Admire added that his client has offered to add trees and other types of decorative shrubbery. He stated the plan is for the plantings to grow to serve as a natural barrier.

Ms. Prince followed up with asking if it would have barbed wire all the way along Martin Place and Cincinnati. Mr. Admire affirmed that to be the plan. Ms. Prince asked what the space would be used for. Mr. Admire stated petitioner intends to use it for an RV/camper rental storage area. Ms. Gray reminded that to be a permitted use.

Connie Carroll, resident at 2 Martin Place, asked if barbed wire was overkill. Ms. Myers stated that barbed wire is permitted. Ms. Carroll thinks it to be unsightly and a poor view for the planned for bed and breakfast. She also expressed her feeling that if they don't put in the sidewalk and curbs and remove the poles, people will park in the grass again. Mr. Admire pointed out that along Cincinnati there is an incline that would be helped by plantings.

Ms. Gray explained how sidewalks are developed. She stated the city does not routinely go out and build sidewalks, but when new developers come in, they are always required to put in sidewalks. She stated if the lot was already developed when the ordinance was put in place, the lot is considered grandfathered, or legal non-conforming by ordinance, and those lot owners are not made to make improvements. When someone who has a legal, non-conforming use or a grandfathered lot says they are going to modify that legal non-conforming use, the way you get property up to standards is to then require the owner to comply with the city standards. Ms. Gray stated if the petitioner chooses to leave the fence in compliance with the ordinance they are not required to put in sidewalks. The ordinance states that if modified, the ordinance must be complied with unless the Board determines it is not required.

Ms. Myers expounded that the legal non-conforming site features are the absence of the sidewalk and curb along Water and Cincinnati Streets. She stated by ordinance, a sidewalk and curb are to be installed along Cincinnati also. Due to the current configuration and railroad, it makes less sense to install along Cincinnati. Due to the lack of existing sidewalks and curbs, it does make sense along Water Street, which is why it's recommended in the staff report. Ms. Myers stated the wooden poles lying adjacent to Water Street are not allowed by the City of Franklin, they are in violation and would need to be move regardless. She stated the placement of the poles was to assist in prohibiting people from trespassing on their property; however, that's what a curb and sidewalk does also. She stated with this right-of-way, on-street parking marked appropriately would be able to be provided as well. It is staff's opinion that the curb is the most important feature in this situation.

Mr. Barrow asked if the emphasis on a curb replaced the demand for a sidewalk. Ms. Myers confirmed. Mr. Barrow asked if the 50/50 sidewalk plan is still in place and does it apply to commercial as well as residential. Ms. Myers explained the city's current sidewalk replacement program. She stated the property owner pays for the materials and the city supplies the manpower. Ms. Myers confirmed it applies to residential properties but is not aware if it applies to commercial and industrial properties.

Chairman Martin closed the public hearing after no one else stepped forward to speak for or against the request.

Ms. Sullivan invited Mr. Admire to make his additional points during his rebuttal time. Mr. Admire reminded their variance is only along Cincinnati. The property entrance is where the curb and sidewalk is being discussed. The petitioner only has two entrances into his property.

Ms. Myers explained that the requirement for the curb and sidewalk applies to Cincinnati. In lieu of enforcing the curb and sidewalk along the much longer length of Cincinnati, it makes more sense for the property owner and the neighborhood to do it along Water.

Mr. Barrow asked a question about a graphic on the PowerPoint presentation, regarding how far the red dotted line, which indicates the requested location of the fence, is from the pavement along Cincinnati Street. Ms. Myers identified it at the smallest point to be 15 feet.

Chairman Martin requested staff's recommendation.

Ms. Myers presented staff's two recommendations:

Option A: Approval with conditions "a" through "g" as outlined in the staff report.

Option B: Alternate approval with conditions "a" through "c" as written in the staff report; modify "d" to read: "install a curb from Cincinnati Street north to tie in to the existing curb along Martin Place"; strike "e"; "f" to be modified to read: "The design location and construction of the curb shall be reviewed and approved by the city engineer prior to installation; and "g" be modified to read: "the ground surface area between the curb and the fence which is a minimum of 50 feet shall be converted to top soil and grass."

Ms. Myers highlighted that within staff recommendation Option B, every recommendation to the sidewalk was removed.

Mr. Barrow asked if the two staff recommendations met petitioner's approval. Mr. Admire stated the petitioner's response is "no" to both scenarios. Ms. Sullivan sought clarification on the curb requirement being only for Water Street. Mr. Admire explained the costs being prohibitive.

Ms. Myers asked if a continuance could be requested of the Board to allow for further conversation with the property owner regarding the length along Water Street.

Mr. Barrow made a motion to continue ZB 2019-06 (V) to the next regularly scheduled meeting without any additional notice requirements. Ms. Sullivan seconded the motion. The motion Passed, unanimously, 4-0. The meeting will be on June 5th at 6:00 p.m. in Council Chambers of City Hall.

Other Business

Adjournment:

There being no further business, the meeting was adjourned.

Respectfully submitted this 5th day of June, 2019.

Jim Martin, Chairman

Charlotte Sullivan, Secretary