



CITY OF FRANKLIN

DEPARTMENT OF PLANNING & ENGINEERING

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BZA Staff Report

To: Board of Zoning Appeals Members
From: Alex Getchell, AICP, Senior Planner
Date: October 2, 2020
Re: Cases ZB 2020-13 (V) | Greg Leugers/Terry Johnson

REQUESTS:

Case ZB 2020-13 (V)... Lot 4B of Roadside Subdivision – Timbercreek Investments. A request for Developmental Standards Variance from the City of Franklin Zoning Ordinance, Article 3, Chapter 4, Minimum Side yard primary structure setback of 10 feet (50 feet minimum required), in the A: Agricultural zoning district, for property located on the west side of Centerline Road, approximately 850 feet south of the intersection with SR 44. The subject property is within the City of Franklin's Extraterritorial "Buffer Zone" Area. Parcel ID: 41-08-20-014-015.000-013

PURPOSE OF STANDARD:

The "A", Agricultural zoning district is intended to provide locations for agricultural operations and related land uses. This district is further intended to reduce conflicts between residential and agricultural areas with the viability of agricultural operations, and limit development in areas with minimal infrastructure. This district should be used to protect agricultural operations from land uses that are incompatible with the available infrastructure.

ZONING:

Surrounding Zoning:

North: A, Agricultural
South: A, Agricultural
East: A, Agricultural
West: A, Agricultural

Surrounding Land Use:

North: Single-family Residential
South: Agricultural crop field
East: Single-family Residential
West: Single-family Residential

CONSIDERATIONS:

1. Petitioner, Timbercreek Investments, LLC, represented by Greg Leugers, is proposing a new single-family house for the 2.0 acre property located on the west side of Centerline Rd, approximately 850 feet south of the intersection of Centerline Rd and SR 44. [[Exhibit A: Petitioner Plan](#) & [Exhibit B: Staff Site Plans](#)]
2. The subject property was created by way of Roadside Subdivision through Johnson County Planning and Zoning Department and is commonly known as Lot 4B, from the "Timbercreek" Roadside Subdivision Tract 4. The Roadside Subdivision Original Survey was recorded in March, 2020. [[Exhibit C: Roadside Subdivision Tract 4 Original Survey](#)]
3. Petitioner proposes a single-story, 40' x 60' living space, with 8' deep wrap around porch on front (east) and side (north), and an attached garage 50' wide by 60' deep. [See [Exhibit A: Petitioner Plan](#)].

Agricultural District Lot Standards

4. According to Article 3, Chapter 4, Agricultural Lot Standards, the Minimum Side Yard Primary Structure Setback (measured from adjacent property line) is 50 feet.
5. Variance Request: *Petitioner is requesting a variance from the Minimum Side Yard Primary Structure Setback (50 feet minimum) in the A: Agricultural zoning district, to be permitted as little as a 10 foot side setback.*
6. Petitioner's agent, Mr. Leugers, indicated to staff that the buyer of the subject property, plans to purchase a strip of ground south of and immediately adjacent to the subject property. Mr. Leugers explained to staff that that scenario could alleviate any concerns due to the reduced setback issue.
7. Staff followed-up Mr. Leugers' scenario with an inquiry to Johnson County Department of Planning and Zoning to determine the feasibility of the above stated scenario.
 - Johnson County staff found recent illegal lot splits that have been recorded by deed for the adjacent property to the south (Timbercreek Lot 3D), including one as described by Mr. Leugers, adjacent to the subject property. [See [Exhibit D: Planning & Zoning E-mail](#)]
 - Johnson County staff informed legal counsel for Timbercreek Investments, LLC of the illegal splits and stated the parcels "are considered illegal splits and are not eligible for any building permits."
 - "If those exemptions (parcels) are added to any other parcels, those parcels will also not be eligible for building permits."
 - Johnson County staff stated the subject property (Lot 4B, 2.0 acres) has not been modified & is "not considered illegal."
8. Therefore, the Board should not consider the request for variance with the idea that the owner will also own adjacent ground, as Johnson County Planning and Zoning staff has indicated that scenario is not possible and the current situation has resulted in illegal splits and parcels not eligible for building permits.

Comprehensive Plan

9. The 2013 Franklin Comprehensive Plan, Land Use Plan, identifies this area as Agricultural. "Agriculture areas are generally located outside the current city limits in Franklin's extended zoning jurisdiction. Existing agriculture areas within the city limits are prime locations for new development, consistent with the future land use plan map. Agricultural areas are intended to include traditional farming uses, in addition to agricultural products storage and distribution facilities (such as commercial grain elevators), stables, natural preserves, agricultural research facilities, and other animal husbandry and food production related activities."

Zoning Ordinance

10. 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.
11. 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.

CRITERIA FOR DECISIONS – DEVELOPMENT STANDARDS VARIANCE:

(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:

Staff finds the approval of the proposed variances will not be injurious to the public health, safety, morals, or general welfare of the community, as the proposed setback would only be applicable to the subject lot and would not impact the overall 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 approval of the proposed variances could affect the use and value of adjacent properties in a substantially adverse manner. The requested side yard primary structure setback of as little as ten feet is permissible in other major residential subdivisions and zoning districts in the City of Franklin; however, the Agricultural district is intended to reduce conflicts between residential and agricultural uses. Approval of the proposed single-family residence to be located as close as ten feet to an agricultural use could affect the use and value of portions of the adjacent 32.76 acre agricultural property, and/or create conflict between uses.

- 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:

Staff finds the strict application of the terms of the ordinance will not result in practical difficulties in the use of the property. As demonstrated by staff's alternate site plan exhibits, staff not only believes the petitioners have requested a variance greater than is minimally necessary, staff believes the proposed house could be constructed without variance altogether. The proposed house design, including the attached 50' x 60' pole barn-size garage could be placed on the property without encroaching on any setback, easement, or the regulated flood plain. Furthermore, the house could be constructed with a smaller garage, which would increase setback distance and minimize the variance request. Additionally, staff finds the property has a consistent slope from the rear setback line toward the front of the property and fill dirt will likely be needed regardless of the location of the new home, as is evidenced by fill dirt already being brought to the site to level the house building pad. In responsible development, all site conditions and zoning standards should be taken into account at the time of design, marketing and sale; Timbercreek Investments, LLC has been aware of the property's Agricultural zoning classification and standards for a number of years, as they have made two prior planning related applications, which cited the Agricultural district.

In conclusion, staff finds the strict application of the ordinance will not result in a practical difficulty in the use of the property, as staff finds the situation to be self-imposed, due to the subject property being of a size and geometry that is conducive to permitted residential structures, albeit with varying amounts of fill-dirt required, and with or without the petitioner's desired 50' x 60' attached garage.

STAFF RECOMMENDATION – DEVELOPMENT STANDARDS VARIANCES

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