



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: April 26, 2023

Re: Cases ZB-23-3 (V) | 169 E Jefferson St

REQUESTS:

Case ZB-23-3 (V)...Pet Elves, Inc. A petition by Pet Elves, Inc., a request for consideration of developmental standards variances from the City of Franklin Zoning Ordinance, Article 8, Chapter 3, to allow a mural to be painted on the east-facing exterior private alley façade wall (10' x 45' in size) and for the mural to be permitted in addition to the signage allowance for the property at 169 E Jefferson St. Proposal would exceed the maximum number of signs, maximum area of a wall sign, and maximum total area of signage, in the MXD: Mixed-use Downtown Center zoning district.

PURPOSE OF STANDARD:

The "MXD," Mixed-Use: Downtown Center zoning district is intended to provide for the continued viability of the historic central business district. This district is also intended to accommodate and support the use of existing structures within the downtown. It is further intended to permit the continued, contextually appropriate development of the area through re-use and infill development.

ZONING:

Surrounding Zoning:

North: MXD: Mixed-Use, Downtown Center
South: MXD: Mixed-Use, Downtown Center
East: MXD: Mixed-Use, Downtown Center
West: MXD: Mixed-Use, Downtown Center

Surrounding Land Use:

North: KORN Country; Bay 7 Vintage
South: Jessen Funeral Home Parking Lot
East: Jessen Funeral Home
West: Franklin T-Shirt Express

CONSIDERATIONS:

1. Pet Elves, Inc., petitioner and owner of the property, is proposing a hand-painted mural, professionally painted directly on the surface of the façade, approximately 10' x 45' (450 sq. ft.), at 169 E. Jefferson St.
2. Petitioner has chosen the artist (Greg Potter) and the mural design. Staff specifically requested petitioner not share the proposed design of the mural with staff or the Board, in order to prevent any perception of approval or denial based on specific content. Therefore, petitioner is seeking the Board's approval for the size and location of the hand painted mural prior to revealing the design.
3. The subject façade is the east wall of 169 E Jefferson St, which is the east-facing wall of the north-south private alley/drive for Jessen Funeral Home. The subject brick wall is currently painted in a single solid color. [See [Exhibit A: Mural Location](#)]
4. Petitioner was awarded a \$10,000 Indiana Public Art Activation grant from the Indiana Destination Development Corporation and the Lieutenant Governor's Office to complete the proposed mural. [See [Exhibit B: IDDC Grant Award Letter](#)]

Murals defined as Signage

5. According to the City of Franklin Zoning Ordinance, Article 13, Chapter 2, **Sign, Mural** is defined as: “A sign painted onto the side of a building, wall, ground, or structure.”
6. According to the City of Franklin Zoning Ordinance, Article 13, Chapter 2, a **Sign** is defined as: “Any name, identification, description, device, display, or illustration which is affixed to, painted, or represented directly or indirectly upon a building, structure, or piece of land which directs attention to an object, product, place, activity, person, institution, organization, or business. A sign includes the face area which conveys a message, any equipment or sign device, and any related mechanical, electrical, and structural supports and features, such as poles and lighting. In no instance shall this Ordinance be interpreted as considering any flag as a sign”
7. Whereas the proposed mural would be painted onto the surface of the façade of the building the proposal qualifies as “mural sign.”

Sign Standards Variances

8. *Petitioner’s proposal would require variances from the Sign Standards for the MXD: Mixed-use, Downtown Center zoning district, to be permitted the mural in addition to the permitted signage -number of signs and total sign area- for the property, and to exceed the maximum area for a wall sign.*
9. According to the City of Franklin Zoning Ordinance, Article 8, Sign Standards, “The intent of (the Sign Standards) is to further the goals of the Comprehensive Plan; avoid the proliferation of signage; encourage signs to be compatible with the scale of buildings and the surrounding features; maintain and enhance the aesthetic environment of the City; eliminate potential hazards to motorists and pedestrians resulting from signs; and promote the health, safety, and welfare of the residents of Franklin.”
10. According to Article 8, Chapter 1, the area of all signs is calculated by multiplying the maximum vertical dimension by the maximum horizontal dimension of the sign face (“content”) area.
11. According to the City of Franklin Zoning Ordinance, Article 8, Chapter 3, Sign Standards, properties in the MXD: Mixed-use, Downtown Center zoning district are permitted the following permanent signage:
 - Sign Size/Building Frontage Ratio: 1.5 sq. ft. of sign area per 1 linear foot of building frontage;
 - Maximum Total Signage Allowed: 200 sq. ft. (if building frontage allows); Variance Requested
 - Maximum Number of Signs: 2; Variance Requested
 - Permitted Sign Types: Wall, Awning, Projecting, Changeable Copy, Freestanding, Multi-tenant;
 - Maximum Sign Size by type:
 - a. Wall: 100 sq. ft.; Variance Requested
 - b. Projecting: 50 sq. ft.;
 - c. Freestanding: 40 sq. ft.; 10 ft. maximum height;
 - d. Changeable Copy: 32 sq. ft.;
 - e. Multi-Tenant Joint Sign: 20 sq. ft. per tenant, 10 ft. maximum height;
 - f. Window Signs: Maximum coverage of 25% of total glass area.

Franklin Arts District

12. In October 2020, the City of Franklin passed Ordinance 2020-13 establishing a Public Art Advisory Commission “PAAC” for the City. The PAAC is finalizing what will be the official Strategic Plan for the Franklin Arts District, as well as, the official Arts District Map.
[See [Exhibit C: Franklin Arts District Map](#)]
13. The PAAC has established the Vision and Mission of the Arts District:
 - **Vision:** Purposefully making art a priority in the community by encouraging an atmosphere that is creatively active and inclusive.
 - **Mission:** Amplify focused synergy among community partners to provide rich arts and cultural activities and experiences.
14. *The proposed mural location is near the center of the Franklin Arts District, and petitioner has eluded to the mural design being artistic in nature, and completed by a professional artist.*

15. Since artistic murals are typically larger in size and have a greater impact on the aesthetic appeal of a community, and murals also project the values (real or perceived) of an overall community, should the BZA approve the proposed variances, the PAAC will review, make suggestions, and approve the mural for quality of artistic design, relevance & appropriateness, that appropriate paint/medium/technique is used for a long-lasting result, and the suitability of the design to the specific site, neighborhood, and overall community. Furthermore, since the location is public and visible to viewers of all ages, ethnicities and cultural backgrounds, designs must not include nudity, suggestive poses, hate speech or imagery that any group might find obscene, offensive or morally shocking. Political, religious or memorial artwork is strongly discouraged.

Comprehensive Plan

16. The 2013 Comprehensive Plan, Future Land Use Map, identifies this area as Downtown. "Future land use in the downtown area should support the function of the area as a unique focal point and gathering place for the Franklin community. Downtown Franklin should serve the City as a dynamic activity center that includes retailers, professional offices, residences, civic groups, government facilities, restaurants and bars, and service providers. Future land uses in the downtown should contribute to the establishment of an activity center with a mix of land uses which enhance the current community character that the downtown provides."
17. "The downtown should continue to feature strong relationships with both adjacent neighborhoods and with the community as a whole. For the adjacent historically significant core residential areas, the downtown functions as a location for daily social gatherings and casual evening strolls, a source of convenient neighborhood-based retail goods, and a point of connection to local civic and community organizations and City-wide transportation routes. For the City as a whole, the downtown also serves as a location for specialty shops, entertainment, civic gatherings, and access to local government."
18. "The character of the downtown, expressed through its historically significant architecture, should be maintained and enhanced as both a reminder of Franklin's rich past, and a symbol of its community identity and character. The downtown area and its surrounding core neighborhoods embody the traditional mixed-use, compact development characteristics that are encouraged in new construction in the community. Design features in the downtown should be consistent with the historically significant character and architecture present in the area. The downtown must remain a walkable area, with new construction being consistent in scale and setback to the area's current character. Design features should be human scale and include window displays, awnings, street furniture, buildings built to the sidewalk, decorative street lights, and pedestrian-oriented business signs."

Zoning Ordinance

19. 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.
20. 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 approval of the proposed variances will not be injurious to the public health, safety, morals, and general welfare, as the proposal is for a professionally hand-painted work of public art, at a property located near the center of the Franklin Arts District, and represents an opportunity to enhance the community character already present downtown. Approval will contribute to the advancement of the Downtown as a unique activity center and will further the City's efforts to establish and support a distinct arts and cultural district. Staff further finds the approval will not be injurious to the general welfare, as the design will be reviewed and approved by the Franklin Public Art Advisory Commission, which will base their decision on, among other criteria, the quality of artistic design, relevance & appropriateness, that appropriate paint/medium/technique is used for a long-lasting result, and the suitability of the design to the specific site, neighborhood, and overall community. Moreover, since the mural location is public and visible to viewers of all ages, ethnicities and cultural backgrounds, staff strongly recommends the Board condition any approval with a requirement that the design must not include nudity, suggestive poses, hate speech or imagery that might be found obscene, offensive, or morally shocking. Furthermore, staff recommends conditions of approval a. through i., which will further protect the general welfare. Therefore, staff finds the approval, with conditions of approval, will not be injurious to the general welfare.

- 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 that approval likely will not have a substantially adverse effect on adjacent properties, as the location is near the center of the Franklin Arts District, and represents an opportunity to enhance the community character already present downtown. With approval, the proposed mural location could become an attraction to draw more visitors, pedestrians and bicyclists to the downtown area to explore the expanding public art portfolio and local businesses.

Staff finds the approval could be detrimental to the adjacent Jessen Funeral Home use, as the mural will be painted on the side of the building facing the funeral home, and the wall is located in a private alley/drive for the funeral home. Public art murals are often used as a backdrop for passersby to take photographs and observe the work; approval of a mural in this location could create traffic pattern issues for the funeral home. Additionally, the Board has limited ability to regulate the content of the mural. Staff does not believe petitioner wishes to paint a mural that would be shocking or insensitive to funeral home visitors; however, once granted approval, the mural can be changed in the future, by new ownership, as variance approvals run with the property.

Conversely, staff finds the detriment to the use and value of adjacent properties can be mitigated, by requiring the design to be reviewed and approved by the Franklin Public Art Advisory Commission, which can base their decision on, among other criteria, the quality of artistic design, relevance & appropriateness, that appropriate paint/medium/ technique is used for a long-lasting result, and the suitability of the design to the specific site, neighborhood, and overall community. Furthermore, the mural location is near downtown commercial, retail and restaurant uses, and not near residential uses; therefore, pedestrian traffic drawn to the mural will not be a nuisance to the general vicinity, but might be for the funeral home.

Finally, since the mural location is public and visible to viewers of all ages, ethnicities and cultural backgrounds, staff strongly recommends the Board condition any approval with a requirement that the design must not include nudity, suggestive poses, hate speech or imagery that might be found obscene, offensive, or morally shocking. Furthermore, staff recommends conditions of approval a. through i., which will further protect the use and value of adjacent properties. Therefore, staff finds the use and value of adjacent properties will not be affected in a substantially adverse manner.

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 result in a practical difficulty in the use of the property for a hand-painted public art mural. The Zoning Ordinance allows for painted wall signs in the Sign Standards; however, the limits of sign area available effectively eliminate the possibility of an artistic mural. Murals, regardless of content, typically encompass entire façades of buildings and not just small swaths. The strict application of the ordinance would result in the petitioners having to completely change the proposed public art project at the subject property, or cancel the project altogether.

STAFF RECOMMENDATION – DEVELOPMENT STANDARDS VARIANCES

Based on the written findings above, staff recommends **approval** of the petitions with the following conditions:

- a. The mural must receive approval from the City of Franklin Public Art Advisory Commission prior to applying for & obtaining a sign permit, and prior to starting work on the painting of the mural.
- b. All revisions to the design of the mural, and all future mural designs must be reviewed by the Franklin Public Art Advisory Commission prior to starting work on the painting of the mural.
- c. Designs must not include nudity, suggestive poses, hate speech or imagery that any group might find obscene, offensive or morally shocking.
- d. The mural must be maintained in accordance with the Franklin Public Art Advisory Commission's approval, stated guidelines and design criteria, for the life of the mural, including all future mural designs.
- e. Petitioner shall coordinate with the Jessen Funeral Home on the closure times and dates, if necessary, of the private alley/drive prior to starting work on the painting of the mural.
- f. The mural must be completed within ninety (90) days of the start of painting.
- g. Mural content must remain unchanged, except for complete or partial removal, or repair of damaged or faded paint for a minimum of three (3) years.
- h. The mural must be painted directly on the building surfaces using exterior paint and a protective graffiti block clear-coat.
- i. Lighting of the mural must comply with the Exterior Lighting Standards in the Zoning Ordinance, Article 7, Chapter 18, specifically for Lighting of Building Façades.