

MINUTES

City of Franklin, Indiana BOARD OF ZONING APPEALS

June 1, 2016

Members Present:

Tim Holmes	Chairman
Phil Barrow	Vice-Chairman
Jim Martin	Secretary
Brian Alsip	Member

Members Absent:

Rev. Richard Martin	Member
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Others Present:

Alex Getchell	Associate Planner
Lynn Gray	Legal Counsel
Julie Spate	Recording Secretary

Call to Order:

Tim Holmes called the meeting to order at 7:00 pm.

Approval of Minutes:

Lynn Gray requested a change in the fifth paragraph of page three to read "Mr. Getchell, indicated the Zoning Ordinance" instead of "in the Zoning Ordinance" Jim Martin made a motion to approve the May 4, 2016 minutes as corrected. Phil Barrow seconded the motion. The members voted to approve the minutes.

Swearing In:

Ms. Gray swore in the audience en masse.

Old Business:

None.

New Business

ZB 2016-04 (V) – Graham Street Storage

Alex Getchell introduced this request by Benham & Edwards, LLC, for property at 1137 Graham Street. The petition is for a developmental standards variance to allow the top of the bank of the detention pond to provide less than two feet of free-board protection above the 100-year flood elevation for the area in which the pond is located. It is in the IBD zoning district. A variance is needed as the petitioners are requesting to provide only 0.3 feet of free-board protection, instead of the two feet required. The application is complete and the public notification requirements have been met.

Attorney Steve Huddleston represented Benham & Edwards, LLC. The entire site is 3.4 acres, mostly in the industrial business development area. Mr. Huddleston gave an existing property and planned construction overview through PowerPoint slides including two additional buildings and an open RV/boat storage area. Their plans include additional landscaping in compliance with the city ordinances. Because the land is so flat, putting a two-foot free board addition on the pond would keep water from draining into the pond like a dike, so they requested to extend only 0.3'. The water currently drains to the northeast and southeast, and the water that runs to the northeast has nowhere to drain out. Putting in the pond will stop all the water gathering and standing on the northeast section of the property and instead drain into the pond which will come out into the piping on the southeast.

Mr. Huddleston then addressed the three statutory criteria:

General Welfare: Vegetation and sodding is planned for any erosion around the pond to retain the water. The pond is designed to keep the water from topping. The top of the pond bank is two-feet above the normal pool elevation. An emergency spillway is designed for the southern end of the pond. Even if the 100-year flood is reached, the water will come out to the south end through the spillway, so it does promote the general welfare of the public.

Adjacent Property: The pond is located 20 feet from the property lines and is less than 0.5 acres in size. The proposed height of the pond bank will not substantially affect the neighboring uses or the property values. The petitioner agreed with the staff report on this point.

Practical Difficulty: The petitioner maintained that the strict application of the terms of the ordinance will result in a practical difficulty in the use of the property. The parcel is 3.5 acres and almost absolutely flat. Positive drainage would not be possible with the two-foot free board requirement. The storage area will all be asphalt. All things asked for by the Tech Review Committee will be done, if not already, including turnaround space for fire department.

Chairman Holmes opened the public hearing, by asking for anyone wishing to speak for or against the petition. Michael Graham stepped forward and stated his family owns the property to the north. He initially had concerns upon learning the retention pond was coming in so took the plans to an engineer and surveyor who confirmed them good and without concern regarding flooding on their property. The VFW, upon original purchase of the subject property, provided a gentleman's agreement that if they put up anything that bordered Mr. Graham's property, they would erect a privacy fence. They didn't, so he asked if that agreement could be honored now. Ms. Gray thanked Mr. Graham for coming but directed him that the only issue before the board today is the issue of the 0.3 feet free board protection. Mr. Graham acknowledged his awareness of that but explained this was his only way to make contact with anyone. Mr. Graham & Mr. Huddleston then agreed to talk after the meeting in private, and Mr. Graham confirmed he had no issue with the retention pond.

Franklin resident Ralph Goforth owns property on the southeast corner. His driveway is a shared easement with the two existing storage buildings built on that easement line with the doors facing his driveway, so Mr. Goforth explained that people block his driveway consistently. He often has to call the police to get them moved so he can get in and out. He maintained that if two more sheds are erected and he continues to get blocked in, he is not in support of the project. Ms. Gray explained that they are permitted to put the buildings where they indicated per city ordinance and again directed the gentleman back to the only issue before the board being whether the pond free board is going to be 2' or 0.3'. Mr. Holmes asked if the easement is public or private. Mr. Getchell confirmed the existing

easement to be private and that any new buildings could not be built on the easement. Mr. Holmes asked if it is recorded. Ms. Gray said they didn't know. The city will check the plat, our ordinances, and restrictions that are of record, but the City doesn't have jurisdiction to get involved in private debates. The respondent continued by asking why the pond was being restricted from where it was originally to be at and now moved to a different location on the property. Ms. Gray explained that it is not a matter of restriction but are they permitted to put it where they wish. She once again reminded that the only issue before the board is the variance request for 0.3' instead of 2' of free board. Mr. Goforth expressed concern about the water flowing to his property. Ms. Gray explained the only reason the petitioner is required to be at the meeting is that the city enforces their requirements for drainage and they are putting a pond in, in accordance with our requirements, in order to be able to build the buildings. Mr. Goforth stated he feels the pond should only be two feet, not three feet. Mr. Getchell explained the design of the pond, including proposed normal pool, 100-year flood elevation, and what the City requires for free board protection. Mr. Getchell stated the normal pool elevation would be 740.00. When there is a 100-year rain event, the water in the pond will raise to 741.70 elevation, meaning the pond will raise 1.7 feet. The City requires the top of bank of the pond to be 2' above the 741.70 elevation. He stated the petitioner is requesting the top of bank of the pond be only 0.3 feet above the 100-year elevation. Mr. Goforth stated, if they build it up, it will shove more water onto his property. Ms. Gray stated they are not wanted to build it up, and that his point is the same as what the petitioner is requesting. Mr. Getchell further clarified, that by having a lower top of bank, more of the surface drainage can get into the pond, versus flowing around the outside of the top of bank.

Mr. Huddleston returned to respond. They are happy to speak to Mr. Graham regarding the fence after the meeting. What they are proposing will take the water into the pond instead of Mr. Goforth's property.

Mr. Getchell presented staff's recommendation for approval of the petition with the condition that a minimum of 0.3' free board protection above the 100-year flood elevation be provided.

Mr. Martin made a motion to approve with staff's recommendations. Mr. Barrow seconded. The motion passed unanimously.

ZB 2016-08 (UV/V) – Tracy Bohler

Mr. Getchell introduced the case of a use and developmental standards variance request by Peter and Tracy Bohler at 70 N Home Avenue. The petition is to allow for a retail use (medium scale), in this case, a vintage home décor store with women's and children's fashion boutique as well. The developmental standards variance is to allow no customer parking be provided for that proposed use. It is in the RTN zoning district. A variance is needed as retail uses are not permitted in any of the residential zoning districts including the RTN district, and the petitioner is required to provide at least eight parking spaces but can only provide two for employees behind the actual house. The application is complete and the public notification requirements have been met.

Tracy Bohler presented the background of her family and business plan for this property. She stated they would combine antiques with new home décor and also a women's and children's fashion boutique. She went on to identify the hardships and peculiar conditions of the home, starting with 1. Dilapidation, 2. Surrounded by rental properties, 3. Two-bedroom only, 4. The view facing east of the Mt. Zion Church, 5. Proximity to Home and Jefferson Streets intersection is not ideal for a home, but is for a business, 6. No yard is not ideal for a family with children, but is for a business, and 7. Extreme proximity to neighboring houses, is too close for comfort for potential buyers.

Ms. Bohler addressed the statutory criteria:

General Welfare: Ms. Bohler stated approval of their request would not be injurious, but rather that their business would fit appropriately both within the structure and neighborhood, especially in their plan to partner with Girls Inc. to donate dresses to girls in need, as an incentive for girls to complete certain assignments or tasks. She went on to address adjacent properties, citing how the house will be restored to its original condition. Ms. Bohler, speaking to the Comprehensive Plan criteria, stated the home is not in the core of a residential neighborhood and that it is on the outskirts. Her plan for parking is to park in the garage, freeing up two spaces in the driveway. She and her employees would also be willing to park in the public lots, continuing to keep two spaces free. She maintained that there are five to six parking spaces available during the day along the Mt. Zion General Assembly Church property as well. She also believes most of their shoppers will be on foot, coming from where they have parked closer to the cluster of antique shops and other nearby businesses. She plans to advertise their location in relation to the courthouse with their parking available to deter Home Avenue parking. She plans for their hours of operation to be three to five days a week, during the day only, so that by the time neighbors are coming home from work, they would already be gone.

Milt Johnson, resident at 151 East Madison directly behind the house the petitioner seeks, spoke in support of their shop east of the railroad track and not directly behind his house. Mr. Johnson asked if the variance would be the same for the next owner, which might not be as good for the community as this business. He thinks this business would be better two blocks away along with the other like businesses.

Real estate agent Joe Class spoke in support of this request as the agent selling the house to Ms. Bohler. Mr. Class pointed out there is a fence between this property and Mr. Johnson's. Mr. Class expressed that other than "technicalities", the variance should be granted for the advancement of Franklin and that the Board should look at the overall benefit and not just guidelines that were arbitrarily made a long time ago. Ms. Gray instructed Mr. Class that the Board is required to look at the law and guidelines and that they are not arbitrary.

Ms. Bohler responded to Mr. Johnson's concern for his property. She maintained his interests are better served through her shop over another rental property as was also communicated to her by several in her walk around the neighborhood.

Mr. Getchell gave the staff recommendation of denial for the use variance based on the statutory criteria as laid out in the staff report. Staff also recommends denial of the developmental standards variance requiring eight spaces when only two are provided, based on the criteria as laid out in the staff report. Mr. Getchell responded to the petitioner's comment that one car could be parked in the garage and two customer cars could be parked in the driveway, and stated that per the ordinance, that situation could not be allowed as one space in the driveway would block direct access for the car parked inside the garage.

Mr. Alsip made a motion for denial of the use variance due to conflict with the Comprehensive Plan. Mr. Barrow seconded the motion. The motion for denial passed unanimously.

Mr. Alsip also made a motion for the developmental standards variance to be denied as it is injurious to the general welfare due to not enough parking spaces being provided. Mr. Barrow seconded the motion. The motion for denial passed unanimously.

ZB 2016-09 (V) – Amanda Peters

Mr. Getchell introduced the case by Amanda Peters at 600 S Main Street for a developmental standards variance to allow a six foot high fence in her front yard in the RTN zoning district. The variance is needed as fences are only permitted to be three feet in height in front yards. Ms. Peters' property is a corner lot and per the zoning ordinance she has two front yards (Main & Pitt). The application is complete and the public notification requirements have been met.

Ms. Peters presented her request particulars and addressed the statutory criteria:

General Welfare: Ms. Peters stated the general welfare would not be harmed as there would be no sight impediments to the intersection or pedestrian pathways.

Adjacent Properties: Ms. Peters stated she is bordered by an alley and there is no sidewalk on Pitt Street, so there would be no adverse effects to neighboring properties or crowding. She has spoken personally with her neighbors regarding her proposed construction to no objections.

Practical Difficulty: Ms. Peters explained that she would experience practical difficulty if not granted this variance. Some surrounding properties are as close if not closer to the road than her fence would be. It obstructs no sightlines and will be harmful to no one. She stated, as a single young female living alone, the security provided by a privacy fence on all sides, particularly when taking her dog out at night, would be invaluable. The residence directly across from the proposed fence location is a rental property that has had multiple police visits just in the last months since Ms. Peters has been in her home.

Mr. Getchell provided staff's recommendation for approval of the petition with two conditions, the first being that a fence six feet in height shall be permitted up to the north property line, and the second being, that no portion of the fence shall be located within the right of way of the City of Franklin. Mr. Holmes asked if the conditions were acceptable to the petitioner and Ms. Peters assured they were.

Mr. Barrow made a motion for approval with staff's recommendation for conditions. Mr. Alsip seconded. The motion passed unanimously.

Other:

None.

Adjournment:

There being no further business, the meeting was adjourned at 8:02 pm.

Respectfully submitted this 6th day of July, 2016.

Tim Holmes, Chairman

Jim Martin, Secretary