



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: March 30, 2017

Re: Cases ZB 2017-04 (UV/V) | 40 N. Water St. | John Wilson

REQUESTS:

Case ZB 2017-04 (UV/V)...40 N. Water St.

A request for:

- (1.) A variance of use, from Article 3, Chapter 16, to allow a single-family dwelling use in the MXD: Mixed-use Downtown Center Zoning District,

And an associated developmental standards variance request from the City of Franklin Zoning Ordinance:

- (2.) Article 7, Chapter 10 General Parking Standards (Parking spaces for uses permitted by variance) in the MXD: Mixed-use Downtown Center Zoning District. The subject property is the former Elks Club on the west side of Water Street, just north of Jefferson Street, with a common address of 40 N. Water St.

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.

CONSIDERATIONS:

Proposed Use

1. John Wilson (Petitioner) is requesting approval to convert the old Elks Club building, 40 N. Water St., which is currently 100 percent commercial, into a single-family residence occupying 82.5 percent of the building, including 65 percent of the ground floor. Only 35 percent of the ground floor would be set aside for a permitted commercial/retail use. See First & Second Floor Plans [[Exhibit A](#)].

Single-Family Dwelling Use

2. According to Article 3, Chapter 16 of the City of Franklin Zoning Ordinance, the only residential uses permitted in the MXD: Mixed-use Downtown Center are secondary dwellings (on upper floors).
3. According to Article 13, Chapter 2, Definitions of the City of Franklin Zoning Ordinance, a dwelling is defined as "a building or structure or portion thereof, designed for the residential purposes of a family or other single housekeeping unit. Merriam Webster's Dictionary defines secondary as "of second rank, importance, or value."

4. Whereas petitioner proposes a single dwelling unit, and whereas said dwelling unit would occupy 65 percent of the ground floor, all of the second floor, and 82.5 percent of the overall building, staff has determined the proposed use does *not* qualify as a permitted secondary dwelling, and instead should be classified as a request for a single-family dwelling.
5. A single-family dwelling is listed as a permitted use in all of the Residential zoning districts (RR, RSN, RS-1,2,3, RTN, RT-1,2,3, RM, and RMH) and in the Agricultural (A) zoning district. A Single-family dwelling is listed as a *prohibited* use in all the Mixed-use Center (MXD, MXN, MXC, & MXR), the Institutional (IN), and Industrial (IBD, IL & IG) zoning district.
6. One or two dwellings would be permitted in the Residential Multi-family (RM) district and in all the Mixed-use Center (MXD, MXN, MXC, & MXR) zoning districts, including the subject property, as long as the dwelling(s) were located entirely on upper floors.

Existing & Proposed Floor Layout

7. The subject property at 40 N. Water St. is listed for sale as a possible retail, hospitality, service, commercial single tenant, office, or restaurant use. The listing photographs [See Exhibit B] show the building largely untouched since the last tenant, the Elks Club, vacated the space after occupying the building for 45 years (1971-2016, according to Daily Journal Article 7/31/16).
8. Petitioner is proposing to completely remodel the ground floor of the building, including removal of the Elks Club wrap around bar on the ground level, conversion of the commercial kitchen to a residential kitchen, construction of a new half bathroom and closet in the proposed residential living area, and renovation of the north 17'-6" of the building for a small retail store.
9. Petitioner is proposing an open loft concept for the second level, including three open bedrooms, two full bathrooms, a fully functioning kitchenette, and a laundry room off the master bedroom. Petitioner also stated the existing stair corridor will remain as is with the existing chair lift remaining.

Parking Variance

10. *Petitioner is requesting approval to not provide any specifically designated off-street parking spaces for the proposed single-family dwelling.*
11. Article 7, Chapter 10 of the Zoning Ordinance states "Any use which is nonconforming in the zoning district in which it is located or is permitted by special exception or variance shall provide parking which is consistent with the use and the standards for the zoning district in which the use is permitted by this Ordinance. In no case shall the number of parking spaces required for non-conforming uses or those permitted by special exception or variance be solely based on the standards for the district in which they are located. The Board of Zoning Appeals shall specify the number of parking spaces for all uses permitted by special exception or variance consistent with the intent of this Chapter."
12. According to Article 7, Chapter 10, Residential Parking Standards:
 - A minimum of 2 off-street parking spaces are required for each dwelling in all of the Residential zoning districts (RR, RSN, RS-1,2,3, RT-1,2,3, & RMH) except the RTN & RM districts.
 - The RTN district requires the average number of off-street spaces provided per dwelling unit on other "RTN" zoned lots within 500 feet of the subject lot, with a maximum of 2 being required.
 - The RM district requires a minimum of 2.5 off-street parking spaces for each dwelling unit.
13. According to Article 7, Chapter 10, Non-Residential Parking Standards:
 - A minimum of 2 parking spaces are required for each dwelling unit.
 - Permitted uses located in the MXD, Mixed-use Downtown Center zoning district are exempt from the minimum number of parking spaces.
14. Therefore, since the proposed single-family dwelling would be approved by variance, according to Article 7, Chapter 10, **a minimum of 2 off-street parking spaces would be required for the use.**

Comprehensive Plan & Zoning Ordinance

15. 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."
16. 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.
17. 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.

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: Parking Lot, Residential (Single-family)
South: Jefferson Street Pub
East: Residential (Single-family)
West: Mutual Savings Bank

CRITERIA FOR DECISIONS – USE VARIANCE:

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

In taking action on all use 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 use variance of this Ordinance if, after a public hearing, it makes findings of facts in writing (consistent with IC 36-7-4-918.4) that:

DECISION CRITERIA – USE VARIANCE

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 of the use variance will not be injurious to the public health, safety, or general welfare of the community, as approval would not introduce a nuisance use to the area. Single-family residences exist across the street and to the north; approval of this proposed single family use would not injure the public health, safety or 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:

Approval of the use variance will not substantially affect the use and value of the area adjacent to the properties included in the variance. The proposed use is not a potential nuisance use, nor would it substantially alter the character of the area, as other single-family residential uses exist across the street and to the north.

3. *Peculiar Situation: The need for the variance (arises or does not arise) from some condition peculiar to the property involved.*

Staff Finding:

Staff finds the need for the variance does not arise from a condition or situation peculiar to the property. The subject property is zoned MXD: Mixed-use, Downtown Center, lists a multitude of permitted Commercial and Institutional/Public uses, such as: restaurant, retail uses (small & medium scale) including bakery, deli, ice cream shop, antique shop, and variety store; also, professional office uses (attorney, CPA, Insurance office, etc.), barbershop/salon, dance studio, microbrewery, banquet hall, church, community center, day-care center, government offices, or medical clinics. Additionally, residential uses are permitted on the second level, including the option for one or two dwelling units; there is no shortage of potential uses for the property.

The two-story building was most recently occupied by the Elks Club for four and half decades (1971-2016). Staff finds there is nothing peculiar about the property in question, and more specifically, nothing peculiar about the ground level of the building that prevents or discourages it from continuing to be used for any one of -or any combination of- the numerous commercial or institutional/public uses permitted in the MXD zoning district. Moreover, the portion of the ground level proposed to be converted to residential use is currently, and has long been used as a commercial kitchen and bar/lounge area. A complete demolition of the bar and remodel of the kitchen area is proposed to complete the conversion to residential use, which further underscores there is nothing peculiar about this property (and specifically the first floor) that necessitates it be converted to a single-family residential use.

4. *Unnecessary Hardship: The strict application of the terms of this Ordinance (will or will not) constitute an unnecessary hardship as they are applied to the property for which the variance is sought.*

Staff Finding:

Staff finds that the strict application of the terms of the Ordinance will not constitute an unnecessary hardship as they are applied to the property. Given that the building, and the ground level in particular, is laid out in the same manner as it was continuously occupied for forty-five years, and given that the existing layout could reasonably accommodate a restaurant, bar, or microbrew tap room, all of which are permitted uses, staff does not find an unnecessary hardship in the strict application of the ordinance, as the property currently exists.

Moreover, there are a multitude of other Commercial and Institutional/Public uses permitted at the property, such as: retail uses (small & medium scale) including bakery, deli, ice cream shop, antique shop, variety store, and barber/beauty shop. Additionally, less intense professional office uses, such as attorney, CPA, or insurance offices are permitted and exist in the general vicinity. Furthermore, larger scale permitted uses, such as: dance studio, microbrewery, banquet hall, church, community center, day-care center, government offices, or medical clinics would be permitted to occupy the entire building or independently occupy portions of the ground and/or second level.

Therefore, given that a multitude of permitted potential uses -lower and higher intensity- have been demonstrated, and given that the only other hardship offered by the petitioner is that the petitioner is paying taxes on a building that has been vacant for less than a year, staff finds the ordinance is not imposing an unnecessary hardship on the property. Finally, the property is only steps from Jefferson St. and is within the heart of the downtown business district, with dozens of complimentary commercial and institutional/public uses within a block or two's walking distance. The strict application of the ordinance will not impose an unnecessary hardship on the property.

5. Comprehensive Plan: The granting of the variance (does or does not) interfere substantially with the Comprehensive Plan.

Staff Finding:

The granting of the use variance may substantially interfere with the Comprehensive Plan. The future land use map classifies this area as Downtown, and the Comprehensive Plan further elaborates that “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.” While the Comprehensive Plan calls for a mixture of uses -including Residential- in the downtown to create a “dynamic activity center,” converting a recently vacated commercial building to 82.5 percent single-family residential use and only 17.5 commercial use, seems to contradict the intent of the Comprehensive Plan, especially when considered with the clear restriction of residential uses to upper levels, in the Zoning Ordinance.

STAFF RECOMMENDATION – USE VARIANCE

Based on the written findings above, staff recommends **denial** of the petition, for failure to meet the statutory criteria for 3.) Peculiar Condition, 4.) Unnecessary Hardship, and 5.) Comprehensive Plan.

CRITERIA FOR DECISIONS – DEVELOPMENT STANDARDS VARIANCES:

(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 development standards variances will not be injurious to the public health, safety or general welfare of the community. If the proposed single-family residential use was instead confined to the second level only, no parking spaces would be required, as uses permitted in the MXD, Mixed-use Downtown Center zoning district are exempt from the minimum parking requirements. The two parking spaces would only be required, due to the BZA approving the use by variance. Moreover, a single-family residential use is likely to have less of a parking demand than most, if not all, of the permitted uses in the MXD district.

- 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 no evidence that approval of the parking variance would affect any of the adjacent properties in a substantially adverse manner. Furthermore, staff finds a single-family residential use is likely to have less of a parking demand than most, if not all, of the permitted uses in the MXD district.

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:

If the proposed use variance, for a single-family dwelling, is approved by the Board, staff finds the strict application of the ordinance will result in practical difficulties, as it relates to the number of required parking spaces provided. If the proposed single-family residential use was instead confined to the second level only, no parking spaces would be required, as uses permitted in the MXD, Mixed-use Downtown Center zoning district are exempt from the minimum parking requirements. Moreover, a single-family residential use is likely to have less of a parking demand than most, if not all, of the permitted uses in the MXD district. Therefore, if the proposed use variance is approved by the Board, staff finds the strict application of the terms of the ordinance will result in practical difficulties.

STAFF RECOMMENDATION – DEVELOPMENT STANDARDS VARIANCES

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

- a. Approval shall be limited to, and only in conjunction with, the Board's approval of the single-family dwelling use.