MINUTES

City of Franklin, Indiana
BOARD OF ZONING APPEALS

July 5, 2017

Members Present

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

Others Present

Alex Getchell	Senior Planner
Joanna Myers	Senior Planner
Lynn Gray	Legal Counsel
Julie Spate	Recording Secretary

Call to Order

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

Approval of Minutes

Jim Martin made a motion to approve the June 7, 2017 minutes. Phil Barrow seconded the motion. The minutes were approved, 5-0.

Swearing In

Lynn Gray swore in the audience en masse. She also reviewed the time constraints and proceedings for the evening's meeting.

Old Business

None.

New Business

ZB 2017-06 (V) – Sherry Keller

Alex Getchell introduced the Developmental Standards Variance request by Sherry Keller at 125 West Adams Street. The property is zoned Residential Traditional Neighborhood (RTN). The Comprehensive Plan designates the area for Core Residential. The petitioner is asking for permission to encroach into the required five-foot side yard setback along the west property line, with a proposed one-foot setback for a new detached garage. The proposed 24'x24' garage is proposed for the south end of her property and will be accessed by the alley. Mr. Getchell stated Ms. Keller's property is 30 feet in width and the proposed garage is 24 feet wide. He stated there would be a five-foot setback on the east and a one-foot setback on the west.

Ms. Keller, petitioner, presented that the 1-foot line on the west side is where the original garage was placed. She stated her neighbor wrote a letter of support for the build. Mr. Getchell noted the letter was included in the Board's packets. Ms. Keller stated it would be set back a little further than the previous garage for easier entrancing and exiting.

Ms. Keller addressed the three decision criteria:
General Welfare: It will not cause any harm and might make it safer so children don't play in the area.
Adjacent Property: It will help on the neighbor's side so weeds can no longer grow up there and will be more of a benefit and even bring up property values.
Practical Difficulty: Ms. Keller stated that due to the narrow width of the lot, it would be impossible to build the garage without the variance being granted.

Mr. Holmes opened the public hearing by asking if anyone else wished to speak for or against the petition. No one appeared and the public hearing was closed.

Mr. Holmes asked for the size of the existing pad. Ms. Keller stated it is 22' by 24'. Richard Martin asked if the neighbors were okay with the construction, and it was reaffirmed the neighbor to the west had submitted a letter in support. Mr. Holmes asked how far off the alley the pad was located. Ms. Keller answered that it is 11 feet from the alley.

Mr. Holmes asked staff if notice was completed appropriately. Mr. Getchell stated that it was notified correctly for the meeting and the request was ready for consideration and action today. Mr. Holmes asked for staff's recommendation. Mr. Getchell gave staff's recommendation for approval as outlined in the staff report, with the following condition: "All applicable permits and approvals shall be obtained prior to construction, including, but not limited to, an Improvement Location Permit for the new structure." Ms. Keller agreed to the condition.

Mr. Martin made a motion to approve the petition with staff's report and condition "a." Brian Alsip seconded the motion. The motion passed unanimously, 5-0.

ZB 2017-10 (V) – Fairfield Inn & Suites – CONTINUED TO AUGUST 2, 2017
Mr. Getchell reported that this case was automatically continued until the August 2nd meeting per request by an adjacent property owner submitted late last week. The documents submitted were timely and followed the rules of procedure for the Board of Zoning Appeals. Mr. Holmes asked what effect a continuance request submitted by an adjacent owner has on notification. Mr. Getchell explained that the person requesting the continuance was required to mail letters via certificate of mailing to all of the same property owners and the applicant. Joanna Myers added that the current meeting serves as notification to all other interested parties.

ZB 2017-11 (V) – Johnson County Community Foundation
Mr. Getchell introduced the request by Johnson County Community Foundation for 351 E Jefferson Street. The property is 0.1722 acres. Zoning is Mixed Use Downtown Center (MXD) and the Comprehensive Plan designates this area as Downtown. Petitioner requests three developmental standards variances to allow three wall signs for a total area of 1734.7 square feet. The proposal exceeds the maximum number of allowed signs in the MXD district, which is two, the maximum area for a wall sign and the maximum total area of signage for the property, which is 75 square feet. The public notification was completed appropriately and is ready for consideration and action.

Johnson County Community Foundation, petitioner, was represented by Kim Minton, Vice President of Development for the Johnson County Community Foundation and Coordinator of the Color the County Mural Program. Ms. Minton began by distributing packets of information to the Board members, marked as Exhibit A. She requested a variance from the Article 8 Sign Standards, for size and number of signs for their Color the County Mural Program. She gave an overview of the program, describing it as creating a pedestrian friendly, aesthetically pleasing environment for visitors and community members and that those looking to relocate often seek communities including these types of amenities. Ms. Minton maintained that in addition to the possible economic benefits that may be realized through the implementation of the mural, the effort would also create cultural, educational and artistic value for Johnson County communities.

The winning artist receives a $1,000 award and all materials and instruction on how to prepare for an outdoor mural. The community is invited to help paint on the determined date, all ages and no experience required. To effectively implement a successful mural program, the Foundation Board of Directors implemented some policies and guidelines. They are intended to provide mural applicants and selection committee members with a reasonable process that will safeguard the interests of the community as well as those of the property owner.

Ms. Minton read the definition of a sign according to the City of Franklin Zoning Ordinance, Article 13, Chapter 2. She explained that the Foundation's Color the County mural program has never been intended to have commercial messaging and has no other intended use than being a collaborative mural for the community. She also asked all in the audience in support of the Color the County program and the proposed Franklin mural to stand in a show of their support. Ms. Minton added that the Indiana Arts Commission granted them $4,095 for the mural. Danny Causey of Madison Street Salvage was selected as the winning muralist.

Ms. Minton went on to address the decision criteria:

General Welfare: Ms. Minton stated the approval will not be injurious to the public health, safety, morals and general welfare of the community. The Foundation and the Color the County Mural Committee believe the selected mural will provide an aesthetically pleasing gateway and welcome to the City of Franklin and enhance the community character of Franklin's downtown. The Foundation has no other intent than to install the proposed mural. The mural will be painted with Sherwin Williams's exterior paint on alumillite, the same material used on two murals last year and be attached to the building as to not harm the current bare masonry of the building façade. When complete it will be covered with a graffiti block to help insure the integrity and life of the mural. City staff suggested a minimum time for the mural to hang and the Color the County mural program policy and guidelines imposes a five-year minimum for the property owner to maintain the mural. Property owners may change, but it is recommended and agreed upon with the current property owner, Franklin Development Corporation, to maintain the mural for five years which is in line with other mural programs in the state.

Adjacent Property: Ms. Minton presented that the use and value of the adjacent properties will not be affected in an adverse manner for five reasons: 1.) Its location is a visual gateway into an historic district and does not disturb the historic district. 2.) The mural is art and not commercial speech. They agree that if it were an advertisement its size would not be inappropriate. 3.) It is adjacent to a railroad track and railroad corridors are traditionally blighted areas. They feel it important to encourage beautification whenever offered. 4.) This particular design complements the historic connection of "Franklin" to its namesake and sets a thematic tone in kites that others might like to also use to promote the city. 5.) Historic districts nationwide often seek to preserve design even while re-purposing structures. This does not disparage the beauty or authenticity of these structures, particularly because in the case of murals, they are on the sides of buildings, adding a vibrancy to a district one wants to thrive. Ms. Minton stated neighboring property owners, specifically Franklin Heritage, Irish Brothers Pest Control, Old Vintage Whimsy Antique Shop, Euphoria, Salvage Sisters and JP Parker are excited about the addition of the mural. Ms. Minton added that if the variance is granted they would support it only being granted for the current property owner, Franklin Development Corporation and/or the life of the mural.

Practical Difficulty: Ms. Minton stated the strict application of the ordinance would result in the Foundation having to completely change the proposed mural project, or cancel the project for this location and install it in another community.

Ms. Minton stated the Foundation does not claim to be a trailblazer in the arts, but has done their due diligence and has significantly researched mural programs in and around Indiana. They have cultivated a following among patrons of the arts and only see that to continue to grow as they connect with more community members through the Color the County Mural Program.

Ms. Gray requested Ms. Minton to clarify the proposed stipulations she stated they were willing to commit to. Ms. Minton stated the commitments were that the variance would run with the existing property owner and the mural would comply with JCCF's requirements and guidelines.

Mr. Holmes asked how and by whom the property owner's maintenance of the mural would be overseen. Ms. Minton assured that JCCF will insure that this stipulation takes place. They have also stated in their guidelines that financial assistance might be available to assist in the maintenance of the murals.

Mr. Holmes opened the public hearing by asking if anyone else wished to speak for or against the request.

Rob Shilts of Franklin Heritage spoke in support of the mural program. He highlighted the way the mural is mounted as being a significant benefit instead of being painted directly onto the brick. He also feels it to be a downtown attraction. Mr. Shilts stated the same Board that reviews downtown façade beautification is responsible for the mural decision making process.

Garnett Vaughn, Greenwood resident and JCCF volunteer, spoke in favor as well. Ms. Vaughn feels with our new tourism bureau in place, that like Philadelphia, the mural capital of the nation, Franklin could develop a tourism program around the mural program. Ms. Vaughn stated the mural under consideration was designed specifically for the proposed location. The Indiana Arts Commission grant is one of the first given by the state in Johnson County ever, thus, Ms. Vaughn maintained, a true testimony to the value of the program.

Ms. Gray reviewed exhibits to be made part of the record including Ms. Minton's presentation, a letter in opposition from Craig Smith and two additional letters in support.

Mr. Holmes asked if JCCF asked the city what was allowed and not allowed before starting the process. Ms. Minton explained that given the mural process from last year and working with city staff, they understood that they were moving through the steps accurately.

Mr. Barrow asked who owned the building and what the future of it would be. Ms. Minton replied that Franklin Development Corporation owns it currently with a lease to CrossRoad Engineers for the next two to three years. At the completion of that lease FDC has the option to lease again or sell the building.

Rev. Martin asked if the mural can be reduced in size. Ms. Minton explained that though it could potentially be reduced in size, for the life of this mural and the size of the building, the size was deemed appropriate and therefore approved. Ms. Gray added that regardless of any potential reduction, it would still need a variance.

Mr. Martin clarified it will not be painted directly on the building. He also expressed concern that mural program might motivate others to tag other buildings on their own.

Rev. Martin asked Mr. Getchell to elaborate on staff's statement that approving the petition could unintentionally invalidate the city's sign standard. Mr. Getchell responded that this is based on the Board's ability to distinguish this proposal from other types of signage throughout the city. If the Board is not able to narrowly tailor this to a specific interest of the city, it could end up the rule citywide. Approval would make it a precedent setting case. If it is not approved based on specifics such as hand painted, location, etc., other requests could come for review for simple signage to be allowed in a similar size. Mr. Getchell stated the decision has to be based on time, place and manner, only. The 1st and 14th amendments of the US Constitution prohibit government from imposing on freedom of speech, and signage is speech. Ms. Gray added about the importance of how the statutory criteria are responded to and handled.

Mr. Alsip asked about the size of this mural in comparison to others around the county. Ms. Minton identified the cumulative of the three murals to be over 1700 sq. ft., which is larger than others but individually the three are not larger. Mr. Alsip asked how the property location was chosen. Ms. Minton spoke with the city mayors across the County and asked them to identify their top three property choices. Joanna Myers explained that the courthouse building mural is identified as sculpture because they are individual pieces of metal.

Mr. Barrow asked if further expansion of the program in Franklin was anticipated. Ms. Minton expressed their hope that the program would receive Board approval that it could continue for the next several years throughout the entire county. They review it annually.

Mr. Holmes requested staff's recommendation. Ms. Myers cited the staff report to stand as submitted. She instructed the Board, in their vote for approval or denial, to support their decision with the statutory criteria that support their findings. Ms. Myers continued, that if there was a motion of approval with the commitments offered by the petitioner, since they offered the commitment that it be held to the property owner itself, in order for that to be transparent with transfers, that that be a recorded commitment that would then be picked up with a title search. Ms. Minton agreed to those terms.

Ms. Gray stated that this request is distinguishable based on place, manner and time from other requests and circumstances, as the petitioner has indicated this is part of a particular community program and will be limited to that property owner itself as opposed to other sign variances that run with the land. Mr. Getchell demonstrated how approval could be precedent setting, if it were approved and a new owner came before the Board to have the same area painted for a Coca-cola sign. He stated there may be different views of the proposed signage area at that time, but the Board cannot use the content as reason for approval or denial. Ms. Gray stated that is true in terms of the content, but you could very clearly, given the presentation given tonight, indicate that it would be injurious to the health, public safety, and general welfare because it is not a community project, it is not funded by somebody else, it is not subject to policies. She stated there is sufficient information to distinguish it in that regard, with the commitment that has been made.

Mr. Holmes asked if the building was sold and the company sold kites, would the sign then be considered commercial advertising. Ms. Gray and Mr. Getchell said that content does not matter and the City is not calling it commercial or art. Mr. Holmes stated one of the petitioner's points is that it is not commercial. Ms. Gray stated that is not what the Board is reviewing. She stated one of the petitioner's points is that it is a community project and it's not driven by economic gain, which falls under the criteria for practical difficulty.

Mr. Holmes made a motion to approve the request with the conditions presented by the petitioner of:

a. Approval is limited to the existing property owner and will not run with the land.
b. The mural must be maintained in accordance with the Johnson County Community Foundation's Color the County Mural program guidelines, with the content of the mural remaining unchanged and maintained for a minimum of five years.
c. Property owner shall record a commitment that approval of ZB 2017-11 (V) does not run with the land but is specific to the current property owner only, and the current property owner will maintain the content of the mural for a minimum of five years.

Mr. Holmes stated they have satisfied the three statutory criteria and addressed each:
Mr. Holmes stated it will not be injurious to the public health, safety and welfare because it is a community activity specific to this location and purpose. He further stated the use and value of the adjacent property will not be affected in any substantially adverse manner due to its location with the railroad and it being the entrance to downtown. He stated there is a practical difficulty due to the square footage as allowed by the ordinance.
Mr. Alsip seconded the motion. A roll call vote resulted in the motion for approval failing with a vote of 2-3 (Mr. Barrow, no; Mr. Martin, no; Rev. Martin, no; Mr. Alsip, yes; Mr. Holmes, yes).

Mr. Alsip moved for denial based on the lack of practical difficulty as a different, more conforming building could have been chosen. Rev. Martin seconded the motion. A roll call vote resulted in the motion for denial failing with a vote of 1-4 (Mr. Alsip, no; Rev. Martin, no; Mr. Martin, no; Mr. Barrow, yes; Mr. Holmes, no).

With there being no other motions made or official action taken, the case was automatically continued to the August 2nd meeting.

After hearing the request for, and the Board granting approval for ZB 2017-12 (V) - Wolfe & Valentine, BZA member Brian Alsip requested the opportunity to make another motion on ZB 2017-11 (V). Ms. Gray stated the meeting has not been officially adjourned, and inquired if the petitioner for ZB 2017-11 (V) was still present. Ms. Minton affirmed she was still in the audience. Ms. Gray announced the request could still be heard and more motions could be made. Mr. Alsip called the JCCF's request back for another vote due to the approval of one mural's variance request and continuation of a second.

Mr. Alsip re-proposed Mr. Holmes original motion for approval of ZB 2017-11 (V) to be called for a vote a second time. Ms. Gray and Ms. Myers reviewed the stipulations attached to that motion. Ms. Minton accepted the conditions. Mr. Holmes seconded the motion. The motion passed unanimously, 5-0.

ZB 2017-12 (V) – Wolfe & Valentine, LLC

Mr. Getchell introduced the Developmental Standards Variance request by Gordon Strain of Wolfe & Valentine, LLC for 100 South Jackson Street. The property is zoned Mixed Use Downtown Center (MXD). The Comprehensive Plan calls for Downtown. The request is to permit a wall sign with a total area of 630 square feet and a projecting sign 15 square feet in size. The proposal exceeds the maximum area of a wall sign and the maximum total area of signage. The property is permitted 67.5 square feet total and two signs.

Keri Ellington presented on behalf of Gordon Strain and the Franklin Department of Public Art (FDPA). They requested a variance from the Article 8 sign standards. The FDPA mission statement is to promote art and artists in Franklin, Indiana and they feel they've done that since opening their doors. They partner with community members, non-profit organizations and businesses to help promote artistry in the community. They've had over 30 local artists represented in the shop and hosted a variety of workshops, lessons and one-on-one guidance to everyone from children to senior citizens. Ms. Ellington maintained that if there was any building downtown that should have a public mural, the FDPA is it.

She presented their request for a variance from the sign ordinance to paint a decorative mural on the north wall of their building. The design will have a girl reading a book with the story expanding across the wall as she imagines it. Because this image will exceed the current ordinance size regulations, we are requesting the variance. In addition to the mural, they also want to attach a blade sign to the corner of the building. This sign will be made of steel and will be internally lit. The sign will read Art on both sides and Maker in the center portion.

Ms. Ellington went on to enumerate their three major goals with this project:

1. Utilize the mural to help beautify and enhance our downtown. By providing more public art, they maintain they might attract more people to the downtown as well as provide enjoyment, a focal point and even a photo shoot stop.
2. They'd also like to utilize local artists and provide some work for them that lots of people would get to see. The mural is detailed and time consuming and they want it to look professional and high quality. By providing some money to these artists, they also help the local economy.
3. The signage would help spread awareness of their business.

Ms. Ellington then addressed the statutory criteria:

General Welfare: The Approval will not be injurious to the public health, safety, morals and general welfare of the community. Ms. Ellington stated they feel the addition of a mural would enhance the community character of Franklin's downtown, attract more people to the area and help local businesses. It would be hand-painted directly on the wall surface, already one large red mural as it is painted brick. Because of their location, they could draw people from the Farmer's Market into downtown Franklin and also encourage people to walk from Jefferson down Jackson and then visit the new business growth on Monroe Street. Ms. Ellington pointed out that the staff report suggested that a variance could include conditions which impose a required minimum length of time that content must remain unchanged and they are 100% supportive of those conditions.

Adjacent Property: The use and value of the area adjacent to the property included in the variance will not be affected substantially in an adverse manner. Ms. Ellington stated they believe the use and value of the area adjacent properties will not be adversely affected. Neighbors to the south are excited about the idea. It could also draw more people to Ann's Restaurant. Ms. Ellington expressed their support for the condition that this variance, if approved, would only be for the current owner alone. They maintained their belief that none of their neighbors had been adversely effected by the public art mural on the county annex across from their building.

Practical Difficulty: Ms. Ellington stated without the size variance granted, this project would be more likely to negatively impact the area. The small dimensions permitted by the zoning ordinance would look awkward, would not be large enough to attract pedestrians, and would lack the professional look of professional murals. The variance is necessary to create this type of public art.

The proposed project aligns with the intent of the Article 8 sign standards as stated in the city-zoning ordinance. It would further goals of the comprehensive plan, the mural would be compatible with the building and scale of murals, it would enhance the aesthetic environment of the city and promote health and welfare. Ms. Ellington spoke of their commitment to this city and public art and that they would only be creating their intended design. Even though the content is protected by the Supreme Court decision, the mural will be of a girl reading a book. There will be no words and no commercial signage on the mural that promotes the business. The blade sign will promote the business. They understand the difference between art and commercial signage and the mural will not be commercial signage.

Mr. Holmes opened the public hearing by asking if any one wished to speak for or against the request. No one appeared.

Mr. Alsip asked if the mural was to be painted directly on the brick. Ms. Ellington explained that it will be painted on the side of the wall which is painted brick. Mr. Barrow asked what part of the sign will be lighted. Ms. Ellington responded the blade sign will be lighted.

Mr. Holmes requested staff's recommendation. Ms. Myers cited the staff report to stand as submitted. She instructed the Board, in their vote for approval or denial, to support their decision with the statutory criteria that support their findings.

Ms. Gray sought assurance that Ms. Ellington as the petitioner's representative had the authority to respond to criteria dictated this evening which she confirmed she did.

Mr. Holmes made a motion to approve case ZB 2017-12 (V) with agreement on the petitioner's response to the three decision criteria and the staff report found there is a practical difficulty. Ms. Gray added the need for a follow up consent from Mr. Strain. Ms. Ellington stated FDPA is also willing to consent to a minimum time frame for the art work to remain. Mr. Holmes choose to not include a minimum time frame in his motion. Rev. Martin seconded the motion. The motion passed, 3-2, with Mr. Martin and Mr. Barrow as the two nay votes.

Other Business

Adjournment:
There being no further business, the meeting was adjourned at 8:20 pm.

Respectfully submitted this 7th day of June, 2017.

Tim Holmes, Chairman

Jim Martin, Secretary