



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: February 2, 2018
Re: Cases ZB 2018-01 (V) | 397 N. Main St.

REQUESTS:

Case ZB 2018-01 (V)...Timothy Munger | 397 N. Main St.

A request for consideration of two developmental standards variances from the City of Franklin Zoning Ordinance, (1.) Article 10, Chapter 2, to allow an increase in nonconformity to a nonconforming structure, and (2.) Article 10, Chapter 4, to allow a modification (expansion) of structure for a nonconforming use, in the RTN: Residential Traditional Neighborhood zoning district, on premises located at 397 N. Main St.

PURPOSE OF STANDARD:

The "RTN," Residential: Traditional Neighborhood zoning district is intended to ensure the continued viability of the traditional-style neighborhoods in existence on the effective date of the Zoning Ordinance (May 10, 2004). This district should be used to maintain contextually appropriate setbacks and standards in its traditional neighborhoods.

CONSIDERATIONS:

Project Overview

1. Timothy Munger, petitioner, is proposing renovations to the multi-family structure located at 397 N. Main St., which include construction of a new two-level front porch/balcony, and expansion of the second floor dwelling units, to include two additional bedrooms on the back of the building.
[See [Exhibit A: Building Plans](#) & [Exhibit B: Historic Photo](#)]

Legal Nonconforming

2. The subject structure has long be utilized as multi-family housing, with four separate dwelling units. In May 2004, when the Zoning Ordinance and Official Zoning Map were updated, the subject property was reclassified to the RTN: Residential, Traditional Neighborhood zoning district.
3. According to the City of Franklin Zoning Ordinance, Article 10, Chapter 1, Nonconforming Status, Legal Nonconforming ("Grandfathered"): "Legal Nonconforming differs from Illegal Nonconforming in that the reason for the nonconformance is caused by the enactment of a Zoning Ordinance or a change to the Zoning Ordinance (including the Official Zoning Map). The structure, lot or use has not changed, but due to the Zoning Ordinance enactment or change, the property no longer conforms to the standards of the zoning district in which it is located. When this situation occurs, the property is deemed Legal Nonconforming or "Grandfathered". Legal conforming lots, structures, uses, etc., may continue in the manner and to the extent that they existed or were used at the time the change in the Zoning Ordinance was enacted."

4. According to the City of Franklin Zoning Ordinance, Article 3, Chapter 10, a dwelling, multi-family (more than 2 dwelling units) is permitted only as a Special Exception Use in the RTN: Residential Traditional Neighborhood zoning district.
5. The four unit multi-family use and structure are deemed legal nonconforming, due to the use & structure remaining unchanged since before the zoning ordinance/map change in 2004, and due to the use previously being permitted by right, without need for special exception approval. If the use and structure did not already exist, or if they were intentionally changed to conform to the current zoning district, a special exception would be required to (re)establish the multi-family use in the current district.

Increase in Nonconformity

6. According to the Zoning Ordinance, Article 10, Chapter 2, Continuation of Nonconforming Structures: Increases in Nonconformity: No legal nonconforming structure shall be enlarged or altered in a manner that increases its nonconformity without the approval of a variance by the Board of Zoning Appeals. Any structure may be altered to decrease its nonconformity.
7. Variance (1.): *Petitioner is proposing to increase the nonconformity of the four-unit multi-family dwelling, by expanding the size of two upstairs units, with a new bedroom for each.*

Modification of Structure for a Nonconforming Use

8. According to the Zoning Ordinance, Article 10, Chapter 4, Continuation of Nonconforming Uses: Modification of Structures: No existing structure devoted to a legal nonconforming use shall be enlarged, expanded, increased, extended, constructed, reconstructed, moved, or structurally altered except as to change the use of the structure to a use permitted in the district in which it is located or as otherwise specified in this Section 10.4(B)(5) below [exemption for single-family residential only].
9. Variance (2.): *Petitioner is proposing to enlarge/expand/increase the existing structure devoted to the legal nonconforming use, by expanding the size of two upstairs units, with a new bedroom for each. Petitioner is also proposing to construct an enlarged front porch and a new second floor balcony.*

Comprehensive Plan & Zoning Ordinance

10. The 2013 Franklin Comprehensive Plan, Land Use Plan, identifies this area as Core Residential. "The core residential areas of Franklin are those which are immediately adjacent to the downtown. These neighborhoods feature a majority of Franklin's historically significant homes. Land uses in these areas should be dominated by a diversity of single-family homes, and also include neighborhood-scale churches and schools. Historically significant duplexes, multi-family dwellings, and accessory residences which contribute to the character of the area should be maintained and enhanced. The conversion of homes to apartments and businesses should be generally prohibited and otherwise strictly regulated. The most significant land use relationships in this area are between the area's residential and non-residential uses, and between the area as a whole and the downtown. The area's mixed uses should continue to support the human-scale features and walkability of the neighborhood. Uses of all types should be of a scale and setback that contribute positively to the character of the area. The strong pedestrian connections to the downtown provided by the area's sidewalks should be maintained and enhanced. Any redevelopment, infill construction, or renovation in these areas should respect and support their unique character. Elements of that character include vehicle access provided by alleys, front porches and small front yard setbacks, street trees, and a diversity of housing styles and sizes."
11. 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 a 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.

12. 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.
13. The surrounding zoning and land uses are as follows:

Surrounding Zoning:

North: RTN: Residential, Traditional Neighborhood
South: RTN: Residential, Traditional Neighborhood
East: RTN: Residential, Traditional Neighborhood
West: RTN: Residential, Traditional Neighborhood

Surrounding Land Use:

North: Multi-family Residential
South: Single-family Residential
East: Two-family Residential
Single-family Residential
West: Flying Frog Bed & Breakfast
Single-family Residential

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 or general welfare of the community. In the general vicinity, there is a pocket of higher intensity residential uses, including the subject property, which has long been used as a four dwelling unit structure, the adjoining property to the north is also a four dwelling unit structure, the property immediately north of it is a large apartment structure, and directly across N. Main St. is a bed & breakfast with four guest rooms. The expansion of the structure to include a larger front porch and second story balcony will not increase the impact of the nonconforming use on the general vicinity. Additionally, while the two new bedrooms would increase the livable area, the number of individual dwelling units is not changing. Therefore, staff finds 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 the use and value of adjacent properties will not be affected in a substantially adverse manner, as the subject property is situated within a pocket of higher intensity residential uses. The subject property and the adjoining property to the north have long been used as four dwelling unit structures, there is a large apartment structure immediately north of the two four-unit houses, and a bed and breakfast is located directly across N. Main St. Moreover, the expansion of the structure to include a larger front porch and second story balcony will not increase the impact of the nonconforming use on adjacent properties. Additionally, while the two new bedrooms would increase the livable area, the number of individual dwelling units is not changing. Therefore, for all the reasons listed above, staff finds approval of the variance will not have an adverse effect on adjacent properties.

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 ordinance will result in a practical difficulty, as the petitioner is proposing to construct a front porch to closely match the original porch that adorned the building years ago; however, petitioner would not be permitted to do so, unless the use was converted to a permitted use, such as, single-family residential. Additionally, staff finds the strict application of the ordinance, as it relates to the bedroom additions on the second floor, will result in a practical difficulty, because the addition is not expanding the footprint of the building, nor is the expansion increasing the number of dwelling units. Therefore, staff finds the strict application of the ordinance would result in a practical difficulty in the development of the property.

STAFF RECOMMENDATION – DEVELOPMENT STANDARDS VARIANCES

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

- a. All applicable permits and approvals shall be obtained prior to construction, including but not limited to, an Improvement Location Permit for the renovations.
- b. All future expansions, additions, modifications, etc. shall require separate review and approval.
- c. Approval of the requests does not permit the creation of additional dwelling units; approval is limited to a maximum of four dwelling units.