



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 28, 2019
Re: Cases **ZB 2019-01 (V) | 899 N Main St**

REQUESTS:

Case ZB 2019-01 (V)...899 N Main St. A request for a Developmental Standards Variances from the City of Franklin Zoning Ordinance, Article 3, Chapter 10, to allow a deck addition (constructed without permits) to encroach into the side yard setback (5 feet required; 0 feet requested), in the RTN: Residential, Traditional Neighborhood zoning district.

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:

Proposed Use

1. Bruce Dowler, Petitioner, is the owner of the single-family home at 899 N. Main St.
2. Petitioner is requesting approval to allow a semi-covered deck to encroach into the required side yard setback. Construction of the deck started without a building permit submittal or approval. Upon notice of violation, petitioner immediately ceased construction and filed for the subject Development Standards Variance. [See [Exhibit A: Aerial Photo](#) and [Exhibit B: Inspection Photos 01/08/2019](#)]

Side Yard Setback

3. According to Article 3, Chapter 10, RTN: Residential, Traditional Neighborhood Lot Standards, the minimum side yard setback for primary structures is five (5) feet.
4. Variance Request: *Petitioner is requesting a variance to reduce the side yard setback for the deck addition to encroach approximately five (5) feet into the side setback along the south property line.* The reduction request is for a zero (0) foot setback between the proposed deck and the property line. [See [Exhibit B: Inspection Photos 01/08/2019](#)]
5. According to Article 7, Chapter 3, accessory structure side & rear yard setbacks are 5 feet in all residential districts.
6. The chain link fence line visible in the violation inspection photos from January 8, 2019 is believed to be constructed along the property line between 899 (subject property) and 855 N. Main St.
7. Phillip & Robin Spalding and Virginia Dunn, owners of 855 N. Main St., the property immediately south of the deck, submitted a letter of no objection to the request. [See [Exhibit C: 855 N Main St Letter](#)]

8. Dorothy Van Breemen, owner of 23 Patterson St, the property immediately east of the subject property, submitted a letter of support for the variance request. [See [Exhibit D: 23 Patterson St Letter](#)]

Surrounding Zoning:

North: MXN, Mixed-use: Neighborhood Center
RTN, Residential: Traditional Neighborhood
South: RTN, Residential: Traditional Neighborhood
East: RTN, Residential: Traditional Neighborhood
West: RTN, Residential: Traditional Neighborhood

Surrounding Land Use:

North: Multi-tenant Prof. Office
Single-family Residential
South: Single-family Residential
East: Single-family Residential
West: Single-family Residential
Main Street Church of God

Comprehensive Plan

9. The 2013 Franklin Comprehensive Plan, Land Use Plan, identifies this area as Traditional Residential. "Traditional residential areas include both (1) existing neighborhoods which are extensions of the core residential areas and (2) new development which is consistent in character and design features with the existing traditional and core residential areas. Land use in traditional residential areas is dominated by single-family homes of a diversity of sizes and styles. Also included are isolated occurrences and small clusters of neighborhood-serving convenience businesses, neighborhood parks and open spaces, and neighborhood-scale churches and schools. Accessory residences and select two and multi-family residential structures may be maintained and incorporated into these areas subject to restrictions which ensure adequate parking and compatibility with the scale, function, and design features of the neighborhoods."
10. The 2013 Franklin Comprehensive Plan, Land Use Plan, elaborates on the Design Features for Traditional Residential neighborhoods: "Traditional neighborhoods are distinctive in their character and references to historic development patterns in Franklin. Streetscapes are dominated by front porches and small front yard setbacks, garages are located to the rear of the house and generally accessed by alleys. Sidewalks; street trees; a diversity of housing designs, sizes, and styles; and human scale street lighting play important roles in the character of these neighborhoods."

Zoning Ordinance

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 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.

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 variance will not be injurious to the public health, safety, morals, or general welfare of the community. Throughout the RTN district and the area designated for Traditional Residential development in the 2013 Comprehensive Plan Land Use Plan it is common for primary structures and accessory structures to have side and rear yard setbacks less than five feet, and often times up to the property line, due to prior zoning ordinances that allowed smaller setbacks. Therefore, approval of this proposed deck will not be contrary to other established properties in the same district and planned land use area. Moreover, the proposed deck does not crowd or create separation issues with adjacent structures or properties.

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 approval of the proposed variance will not adversely affect the use and value of adjacent property owners. The two closest properties that will be most affected by the approval of the variance have both submitted letters of no objection and/or support for the variance request. Moreover, the deck was mostly constructed prior to their letters being submitted; therefore, those neighbors were fully aware of the extent of the proposed deck and any potentially adverse effect it could have on their properties. Therefore, staff finds the approval of the variance will not be injurious to the use and value of 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 terms of the ordinance will result in practical difficulties at the subject property. Petitioner's property is a small and narrow corner lot, with limited area to construct a deck/outdoor living space. The strict application of the terms of the ordinance would prevent the construction of a usable deck, as there is only a small area on the south side of the house that does not fall within the required setback.

STAFF RECOMMENDATION – DEVELOPMENT STANDARDS VARIANCES

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

- a. All applicable permits and approvals shall be obtained prior to commencing construction or occupancy of the deck, including but not limited to an Improvement Location Permit ("building permit").
- b. Approval of the variance is limited to a deck, as proposed, and does permit future encroachments into the side setback nor the conversion of the deck into living space.