



## 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:** November 1, 2019

**Re:** Cases ZB 2019-17 (V) | 370 E. Jefferson St. | Craig & Kim Smith

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### REQUESTS:

**Case ZB 2019-17 (V)...370 E. Jefferson St.** A request for three developmental standards variances from the City of Franklin Zoning Ordinance, as follows:

- 1.) Article 10, Chapter 4, to allow an expansion on the property of a legal nonconforming use,
- 2.) Article 10, Chapter 4, to allow a new structure (permanent passenger rail car) in connection with an existing legal nonconforming use of land, and
- 3.) Article 3, Chapter 10, to allow two primary structures on the lot,

in the RTN: Residential, Traditional Neighborhood zoning district. The property is currently used as a legal-nonconforming railroad museum and Hoosier Cupboard Candy, Snacks and Ice Cream, which is located at 370 E. Jefferson 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.

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:

1. According to Article 1, Chapter 4, of the City of Franklin Zoning Ordinance, Official Zoning Map Interpretation Standards:
  - Divided Lots: Where a zoning district boundary line divides a lot, the zoning in which the majority of the area of the property is included shall apply to the entire property. In cases where a property is divided equally between 2 or more zoning districts, the least intense district shall apply to the entire property. The Planning Director shall determine the applicable zoning for properties divided into multiple zoning districts consistent with this section.
2. Planning Department staff has determined the subject property is divided into two zoning districts, RTN: Residential, Traditional Neighborhood and MXD: Mixed-use, Downtown Center. Staff has determined the majority of the area of the property is included in the RTN district.

3. Craig & Kim Smith, Petitioners, own the Hoosier Cupboard, Candy, Snacks & Ice Cream store located in the former Train Depot at 370 E. Jefferson St. Also located inside the former depot is the Franklin Railroad Museum, operated by the petitioners. The property is zoned RTN: Residential, Traditional Neighborhood, and the existing uses are not listed as permitted; therefore, the use is considered a legal non-conforming use.
4. Petitioners are proposing to expand the Railroad museum use on the property with a second permanent structure, a 10' x 80' circa 1925 Baltimore & Ohio Pullman Passenger Car, to be located parallel to the railroad tracks and north of the existing parking lot. [See [Exhibit A: Site Survey & Plan](#)]
5. Petitioners have provided a summary of their plans for the rail car, along with photos of the rail car. [See [Exhibit B: Summary Description](#) and [Exhibit C: Petitioner Findings of Fact](#)]
6. Petitioners have also provided an example of another rail car being converted to a museum and a brief history of Pullman era rail cars. [See [Exhibit D: Duluth Example](#) and [Exhibit E: Pullman History](#)]
7. Petitioners stated the proposed rail car was restored in 1980; however, nearly 40 years has passed and the condition appears to have deteriorated. The Board should query the petitioner about the current condition of the rail car, the amount and cost of restoration that will be required, and the anticipated timeline for said restoration.
8. Petitioners stated the subject rail car is currently being stored outside of City Limits. The Board should query the petitioner on their plans for transporting and setting the rail car in place. Transportation of the rail car on public streets will require an Oversize/Overweight vehicle permit to be obtained through the State of Indiana.
9. Additionally, with the subject car being 10 feet wide and 80 feet in length, the Board should query the petitioner if they have determined routes for maneuvering the rail car through the City, on the narrow residential streets, and around the tight corners.
10. The City Engineer, upon notification of the potential rail car being transported through downtown, expressed concern for the recently reconstructed roadways, such as Jefferson Street and E. King St.

#### **Nonconforming Uses – Expansion on the Property**

11. According to Article 10, Chapter 4, “no legal nonconforming use of land shall be enlarged, increased, extended to occupy a greater area of land, or moved in whole or in part to any other portion of a lot than was occupied at the effective date of this Ordinance.”
12. Variance (1.): *Petitioner is proposing to occupy a greater area of land, by extending and moving the existing legal nonconforming railroad museum use, to the proposed rail car.* Currently, this area is open lawn/green space.

#### **Nonconforming Uses – New Structure**

13. According to Article 10, Chapter 4, “no new structure shall be constructed in connection with an existing legal nonconforming use of land.”
14. Variance (2.): *Petitioner is proposing to place the subject 10' x 80' passenger rail car on the north end of the property as a permanent structure, with public access.*
15. The subject rail car would be placed 6'-6" from the west property/railroad right-of-way line and 30 feet south of the north property line.
16. Petitioner proposes to place the rail car on “a traditional rail track ballast, similar to the existing caboose,” and not on a permanent foundation.
17. The Board should query the petitioner about accessibility (ingress/egress) of the rail car, and any ramps, stairs and platforms that would be provided alongside the rail car.

### **Lot Standards – Number of Primary Structures**

18. According to Article 3, Chapter 10, “a maximum of one (1) primary structure is permitted in the RTN: Residential, Traditional Neighborhood zoning district.”
19. According to Article 3, Chapter 3, Standards Table, a maximum of one (1) primary structure is permitted in the RR, RSN, RS-1, RS-2, RS-3, RTN, RT-1, RT-2, RT-3, MXD, MXN, MXC, MXR, and IBD zoning districts.
20. According to Article 3, Chapter 3, Standards Table, there is not a maximum number of primary structures for the A, RM, RMH, IN, IL, and IG zoning districts.
21. Variance (3.): *Petitioner is proposing to place the subject 10’ x 80’ passenger rail car on the north end of the property as a second primary structure related to the Railroad Museum. The existing railroad museum/depot/candy & ice cream store building is considered the first primary structure on the property. Only one primary structure is permitted in the RTN & MXD districts.*
22. The surrounding zoning and land uses are as follows:

<b>Surrounding Zoning:</b>		<b>Surrounding Land Use:</b>	
North:	RTN, Residential, Traditional Neighborhood	North:	Madison Street Salvage
South:	MXD, Mixed-use: Downtown Center	South:	Mixed-use commercial (JP Parker, GiGi’s, etc.)
East:	MXD, Mixed-use: Downtown Center RTN, Residential, Traditional Neighborhood	East:	Thanks for the Thyme, Salvage Sisters, Two-family residential
West:	MXD, Mixed-use: Downtown Center RTN, Residential: Traditional Neighborhood	West:	Railroad tracks, Caboose, Irish Brothers Single- & Two-Family Residential

### **Comprehensive Plan & Zoning Ordinance**

23. The 2013 Comprehensive Plan, Future Land Use Map, identifies this area as both Core Residential and Downtown.
24. The 2013 Franklin Comprehensive Plan, Land Use Plan, defines 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.
25. The 2013 Comprehensive Plan, Future Land Use Plan defines 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.”

26. 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.
27. 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 variances could be injurious to the public health, safety or general welfare of the community. The subject property and proposed location for the passenger rail car museum is closely surrounded by core residential uses, and access to the property is gained through and along primarily residential streets. Approval of the tourist attraction and museum at the north end of the property would increase unfamiliar vehicular traffic to the residential area and cause harm to the public health and safety of the general vicinity. If approved, a 95 year old passenger rail car in need of specialty exterior restoration and maintenance would be placed on-site. In addition to the costs associated with restoration, the transportation and placement of the subject 10' x 80' rail car would require skilled and precise engineering, and subsequently, significant costs. Albeit, relatively "mobile," a historical relic of this size and nature would not be easily moved from the property in the future, due to the costs and limited purchasing interest. Failure and/or financial inability to properly restore and maintain the already deteriorating rail car would create an eyesore to the general vicinity, not easily removed/resolved, and would be injurious to the public health and general welfare. Moreover, rail cars are often magnets for vandalism and graffiti; an unmaintained rail car could invite unwanted and criminal attention, further deteriorating the effect on 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 approval of the proposed variances will adversely affect the use and value of adjacent properties. The subject property and proposed location for the passenger rail car museum is closely surrounded by core residential uses, and access to the property is gained through and along primarily residential streets. Approval of the tourist attraction and museum at the north end of the property would increase unfamiliar vehicular traffic to the residential area and cause harm to adjacent properties. Additionally, the proposed location of the

passenger rail car would impede nearly all visibility of 350 E. Madison St., the Madison Street Salvage business, for East- and West-bound Jefferson Street traffic; the use and value of said property would be substantially effected as a result of the significantly reduced visibility from the main east-west thoroughfare. Furthermore, if approved, a 95 year old passenger rail car in need of specialty exterior restoration and maintenance would be placed on-site. In addition to the costs associated with restoration, the transportation and placement of the subject 10' x 80' rail car would require skilled and precise engineering, and subsequently, significant costs. Albeit, relatively "mobile," a historical relic of this size and nature would not be easily moved from the property in the future, due to the costs and limited purchasing interest. Failure and/or financial inability to properly restore and maintain the already deteriorating rail car would create an eyesore to the general vicinity, not easily removed/resolved, and would substantially affect the use and value of adjacent properties. Moreover, rail cars are often magnets for vandalism and graffiti; an unmaintained rail car could invite unwanted and criminal attention, further deteriorating 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 ordinance will not result in practical difficulties in the use of the property, as the subject property is and has been successfully used as a railroad museum and retail store in the former railroad depot. However, petitioner is proposing a unique railroad museum expansion by utilizing a historic passenger rail car that cannot be easily incorporated into the existing primary structure.

**STAFF RECOMMENDATION – DEVELOPMENT STANDARDS VARIANCES**

Based on the written findings above, staff recommends **denial** of the petitions based on the General Welfare and the Use and Value of Adjacent Properties.