



CITY OF FRANKLIN

DEPARTMENT OF PLANNING & ENGINEERING

70 E. MONROE STREET › FRANKLIN, INDIANA 46131 › 877.736.3631 › FAX 317.736.5310 › www.franklin.in.gov/planning

BZA Staff Report

To: Board of Zoning Appeals Members

From: Alex Getchell, AICP, Senior Planner

Date: January 28, 2020

Re: Cases ZB 2020-01 (V) | 2831 N Graham Rd | Jackie D Kean

REQUESTS:

Case ZB 2020-01 (V)...2831 N Graham Rd. A request for two developmental standards variances from the City of Franklin Zoning Ordinance, Article 10, Chapter 4, to allow expansion of a legal non-conforming single-family residential use by more than 50% of pre-expansion living area, and Article 3, Chapter 21, to allow reduction of rear setback, in connection with an existing legal non-conforming use, in the IBD: Industrial, Business Development zoning district. The property is currently used as a legal-nonconforming single-family residential home, and is located at 2831 N. Graham Rd. The property is within the City of Franklin's Extraterritorial "Buffer Zone" Area.

PURPOSE OF STANDARD:

The "IBD", Industrial: Business Development zoning district is intended to provide locations for small scale manufacturing, construction, production, and assembly uses, as well as other light industrial uses. This district is specifically intended to provide appropriate setbacks and standards for small-scale businesses, entrepreneurial operations, start-up businesses, and similar operations.

CONSIDERATIONS:

1. Jackie Kean, Petitioner, is in the process of purchasing an existing single-family residence at 2831 N. Graham Rd. from relatives. Mr. Kean previously owned the property, before selling it to the same relatives in 2011.
2. The subject property was previously zoned to allow residential uses, but has been zoned IBD: Industrial, Business Development since 2004. The IBD district does not list single-family residential uses as permitted or special exception uses; therefore, the use is considered a legal non-conforming use.
3. The property is within the City of Franklin's Extraterritorial "Buffer Zone" Area.
4. In the Fall of 2019, Johnson County Planning & Zoning cited the property owners for construction without a building permit, for an addition to the back of the residence. Due to the property's location in the Buffer Zone, Johnson County holds the authority to issue building permits and uphold building code. The City of Franklin upholds land use and setback standards, among others.
5. Petitioner was directed to seek a permit, as well as, a Buffer Zone Compliance Certificate from the City of Franklin. It was at this time the City of Franklin learned of the addition and informed the petitioner of the necessary, after-the-fact variances, if they wished for the addition to remain.

6. Petitioner provided staff with floor plans for the previously existing home and for the home with the now completed additions. [See [Exhibit A: Floor Plans](#)]
7. Based on the floor plans provided, the original home had approximately 1,566 sq. ft. of living area, and the post-expansion home has approximately 3,327 sq. ft. of living area. The post-expansion home has a gross floor area of approximately 4,299 sq. ft. (incl. porch, deck, and garage).

Pre-Expansion Bird's Eye Views [2014]:



View from South



View from West

Post-Expansion Bird's Eye Views [2019]:



View from South



View from West

Nonconforming Uses – Expansion of Nonconforming Residential Use

8. According to Article 10, Chapter 4, “A legal nonconforming single-family residence located in any Mixed-use, Industrial, or Institutional zoning district may be expanded by up to 50% of the pre-expansion living area 1 time in any 5 calendar year period. The expansion must be for the purpose of continuing the residential use of the property. Required setbacks for the expansion shall be either those established by the zoning on the property, or those provided by the pre-expansion structure, whichever is less restrictive.”
9. According to the floor plans provided by the petitioner, the original home had approximately 1,566 sq. ft. of living area, and the post-expansion home has approximately 3,327 sq. ft. of living area. The post-expansion home has a gross floor area of approximately 4,299 sq. ft. (incl. porch, deck, and garage).
10. According to Article 10, Chapter 4, petitioner would have been permitted to expand by up to 783 sq. ft., without the need for variance.
11. Petitioner’s expansion of 2,733 sq. ft. is ABOVE the 50% maximum expansion area; therefore, it does not qualify as the one permitted expansion in a 5 calendar year period.
12. Variance (1.): *Petitioner requests variance approval to be permitted to expand a legal nonconforming single-family use greater than 50% of the pre-expansion living area. Petitioner requests to be permitted 174.5% expansion, including porch, deck, and garage, greater than the pre-expansion living area.*

Rear Setback

13. According to Article 3, Chapter 21, Lot Standards for the IBD, Industrial Business Development zoning district, the minimum rear yard setback for a primary structure is 25 feet.
14. Variance (2.): *Petitioner stated the expansion of the house encroaches 0.5 feet into the rear yard setback; therefore, petitioner requests variance approval for a rear setback of 24.5 feet for the primary structure (house).*

Comprehensive Plan & Zoning Ordinance

15. The 2013 Franklin Comprehensive Plan, Land Use Plan, identifies this area as Business Development Area. “Business development areas are intended to serve as both the permanent home of small scale businesses and incubators of new local companies. Land uses in business development areas include manufacturing, light industrial operations, contractor’s offices, and products suppliers. In many instances the types of businesses in these areas are those that have both commercial and industrial qualities. The business development areas provide these uses the ability to serve customers in a setting that allows outdoor storage and the operation of heavy equipment and machinery that often are involved.”
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.

18. The surrounding zoning and land uses are as follows:

Surrounding Zoning:

North: IBD: Industrial, Business Development

South: IBD: Industrial, Business Development

East: IBD: Industrial, Business Development

West: IBD: Industrial, Business Development

Surrounding Land Use:

North: Single-family Residential

South: Agricultural Crop Field

East: Agricultural Crop Field

West: G&H Orthodontics/Dolphin Papers

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, as the subject property is one in a cluster of five established single-family residential properties on the same block. Additionally, the subject property has a longstanding accessory structure that appears to be located along the rear property line; approval of the six-inch primary structure setback encroachment will not create a greater encroachment, nor will it result in greater crowding of the property to the east. Therefore, staff finds approval would not injure the public health, safety, morals, 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:

Staff finds approval of the proposed variances will not adversely affect the use or value of adjacent properties, as the subject single-family residence is clustered with other established residential uses on the same block. While the adjacent uses are similarly residential, all are still considered legal nonconforming in the IBD: Industrial, Business Development zoning district; approval of the proposed variance could serve to solidify the residential use and value of the homes in the area for the foreseeable future. Moreover, future development of the adjacent property to the east and south will not be hindered by the approval of the requested variances, as the subject property is similarly zoned IBD, and additional buffering is not required between properties of the same zoning district, despite the potential land use incompatibilities with a legal nonconforming residential use. Therefore, staff finds the use and value of adjacent properties will not be affected in a substantially adverse manner.

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 in the use of the property, as legal-nonconforming single-family residential uses are permitted to increase periodically, albeit, to a lesser degree. Staff finds a practical difficulty in strictly limiting the entire expansion to fifty-percent of the pre-expansion livable area, as the non-livable improvements, such as the front porch, side deck, and garage, also count against the allowable expansion area. Moreover, the design is a two-story residence with a relatively minimal increase in actual building footprint, as compared to a single-story home with the same expansion square footage.

STAFF RECOMMENDATION – DEVELOPMENT STANDARDS VARIANCES

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

- a. The subject property and legal non-conforming single-family use are not eligible for further expansion until February 5, 2025.
- b. All applicable permits and approvals shall be obtained for the expansion, including but not limited to: a building permit and subsequent Certificate of Occupancy from Johnson County, and a Buffer Zone Compliance Certificate.