

MINUTES

City of Franklin, Indiana BOARD OF ZONING APPEALS

November 6, 2019

Members Present

Jim Martin	Chairman
Phil Barrow	Vice Chairman
Brian Alsip	Member
Richard Martin	Member
Charlotte Sullivan	Member

Others Present

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

Call to Order

Jim Martin called the meeting to order at 6:00 pm.

Roll Call & Determination of Quorum

Approval of Minutes

Phil Barrow made a motion to approve the October 2nd minutes. Charlotte Sullivan seconded the motion. The motion passed 4-0.

Swearing In

Lynn Gray swore en masse anyone planning to speak.

Old Business

New Business

ZB 2019-15 (V) – 40 W Adams St – Alex Getchell introduced the developmental standards variance request by Haedyn Scgalski. The property is zoned RTN (Residential: Traditional Neighborhood) and the Comprehensive Land Use Plan calls for the area to have core residential development. The request is to allow a fence six feet in height in the front yard. The petitioner's property is a corner lot and therefore has two front yards. The request is for one front yard only. The property is on the northwest corner of North Main Street and West Adams. The house is situated all the way to the west on the property with a large lawn area to the east. The proposed fence would extend approximately five feet to the actual back property line, run east about 50 feet and then turn south for about 39 feet and come back to connect near the house bay window about 45 feet. It would be approximately 30 feet from the North Main Street sidewalk. Anything between the house's east foundation line and North Main Street is

considered the front yard and so a fence anywhere in that area would have to meet the front yard standards. A three-foot fence is permitted, but the request is for a six-foot fence.

Board Member Brian Alsip entered the meeting at 6:04 pm.

Petitioner Jennifer “Haedyn” Scgalski presented.

1. General Welfare: Ms. Scgalski stated that with her fence being 30 feet away from North Main Street and the right-of-way she believed her proposed plan would not negatively impede traffic.
2. Adjacent Property: Other properties on her street follow similar patterns with their fences, so Ms. Scgalski didn’t believe her proposal would negatively affect adjacent properties or the overall character and development of the neighborhood.
3. Practical Difficulty: The petitioner maintained the practical difficulty as there is very minimal back yard with most of the useable space being in her front yard.

Chairman Martin opened the public hearing by asking if anyone in the audience wished to speak for or against the petition. There being no response, Mr. Martin asked for questions from the board.

Mr. Barrow asked if neighbors were notified and any feedback received. Ms. Scgalski responded that neighbors were notified through the Certificate of Mailing process. Additionally, the petitioner has spoken with her bordering neighbor to the north, and the feedback received was that if the city was okay with the fence, they were as well. If approved, they will discuss together the specifics of the aesthetics.

There being no further questions, Chairman Martin requested staff’s recommendation.

Mr. Getchell gave staff’s recommendation for approval of the petition with the following conditions:

- a. A fence six (6) feet in height shall be permitted no closer than 30 feet from the right-of-way of N. Main Street, as shown on the site plan dated October 29, 2019.
- b. The fence must be constructed to present the non-structural face outward.

Ms. Scgalski confirmed the conditions were acceptable to her.

Ms. Sullivan made a motion to approve ZB 2019-15 (V) with recommendations as outlined by staff. Mr. Barrow seconded the motion. The motion passed unanimously, 5-0.

ZB 2019-16 (V) – 191 Commerce Dr – Mr. Getchell presented the use and developmental standards variance requests by Cord Commercial Enterprises. A NAPA Auto Parts is proposed for this location. Their agent is Fred Paris. The zoning of the property is IBD (Industrial: Business Development) and the Comprehensive Land Use Plan indicates this area for business development. The use variance is for a retail use, medium scale, specifically for auto part sales without onsite repair. The developmental standards variance request is for a reduction of the parking lot perimeter landscaping requirements. They are proposing an expansion of the parking lot to the north toward Commerce. The ordinance requires a 10-foot separation and landscaping between the parking lot area and Commerce Drive. They are requesting to be able to not provide the additional landscaping in this area. There is one to two feet

but not the full 10, and no landscaping is proposed there. Petitioner is proposing seven or eight parking spaces north of the existing building. One would potentially be a handicapped space.

Mr. Paris, representing both the owner and potential leasee, presented, accompanied by Mr. Cord in the audience. He highlighted that it would be one tenant in the entire building and not multi tenants though that is what the building was originally designed for. Putting in the extra parking also relieves any parking issues. Mr. Paris cited their recommendation that the parking spaces be made 10 feet instead of nine because of pickups in trucks and larger vehicles.

Ms. Gray advised considering the decision criteria for the use variance first inasmuch that if it is not approved, there would be no need for the developmental standards variance.

Mr. Paris addressed the decision criteria for the Use Variance:

1. General Welfare: The request of the subject variance to allow for retail sales is very much in line with the majority of the businesses in the subject area, several of which most likely do, or should have similar variance approvals.
2. Adjacent Property: Mr. Paris noted from his answer to the general welfare, several of the area businesses operate sales and services and the subject business will enhance the area by not requiring outside storage or security type fencing.
3. Peculiar Condition: When this area was developed as an IBD zone, it appeared to be a great place for small manufacturing businesses to locate. However, the lot sizes of this particular development make it very difficult for today's modern companies with needs for outside storage and employee parking to fit in this zone. Therefore, this high traffic area with small lots often meets the needs of retail and service businesses, but zoning use requirements and developmental standards often make it necessary to seek variances for property use, lot coverage, and parking.
4. Unnecessary Hardship: As noted in Mr. Paris's response to peculiar conditions, the small lots and general location adjacent to the US 31 corridor and along the main traffic thoroughfare from US 31 to I65, plus the IBD lot size and requirements, if strictly enforced without the ability to receive use and developmental standards variances greatly diminishes the ownership value and potential esthetic value of this major thoroughfare, creating a hardship on the property and a potential negative result for the long-term value to the community.
5. Comprehensive Plan: As noted by planning document developers, whenever comprehensive plans are put together, Mr. Paris believes they are to be living, breathing documents allowing for use of variances, and, over time, changes to better reflect where a community is and where it wants to go. He maintained time has already shown that this type of use fits the area and that continuing to approve such variance requests fits within the Comprehensive Plan and considering either zoning changes or updating allowable uses may be worth considering.

Chairman Martin opened a public hearing by asking if anyone wished to speak for or against the use variance request. There being no respondents, he called for any questions from the Board. There were none. Chairman Martin requested staff's recommendation.

Mr. Getchell presented staff's recommendation for approval with five conditions as set forth in the staff report:

- a. Use variance approval is for a retail use (medium scale) – auto parts sales (without onsite repair) use and approval is limited and runs with the applicant, Cord Commercial Enterprises, LLC, at the subject property, 191 Commerce Drive.

- b. While the use variance remains active and in effect on the property, no other business or business use is permitted on the property, except those clearly accessory to the primary use, as approved.
- c. An application shall be submitted to and shall receive approval from the Division of Fire & Building Safety Plan Review Branch of the Indiana Department of Homeland Security for the change of use, and the structure shall meet all building code requirements for the change of use.
- d. All applicable Federal, State, and Local permits / approvals shall be obtained prior to construction / renovation, including but not limited to: State Construction Design Release, Local Building & Sign Permits, etc.
- e. A minimum of fourteen (14) parking spaces shall be provided onsite.

Ms. Gray confirmed with Mr. Paris that the applicant had seen the conditions, highlighting the use variance to run with the applicant. If the owner changes, the new owner would have to appear for any similar type of request. Though it is to be a NAPA store, since Cord is the applicant, a change of ownership would still require the new owner to appear for any variance requests. Mr. Paris confirmed the conditions are acceptable to the applicant.

Rev. Richard Martin made a motion to approve the use variance request associated with ZB 2019-16, with five conditions as outlined by staff. Ms. Sullivan seconded the motion. The motion passed unanimously, 5-0.

Mr. Paris continued his presentation with the three decision criteria for the developmental standards variance request.

1. General Welfare: Request for relief from developmental standards under 7-16 Parking Lot Perimeter Landscape Requirements would allow the applicant to install up to eight additional parking spaces in front of the building and the road right-of-way. Applicant's agent and planning staff considered a request to reduce drive lanes width. However, after discussion, agreed that requesting relief from the landscape requirement would allow the parking spaces and interior drive lanes to meet code. Applicant further agreed to reduce additional spaces to eight, using two of the spaces on the east end for additional landscaping to enhance the roadway landscape aesthetics. Mr. Paris maintained belief that approval would not have any adverse effect.
2. Adjacent Property: From either Johnson County GIS or Google Maps, it is clear that many of the businesses in this area have added parking between the front of their buildings and the road right-of-way, and that some have little or no landscaping installed. They do not feel approval of this request would affect the values in any negative manner.
3. Practical Difficulty: When this area was developed as an IBD zone, it appeared to be a great place for small manufacturing businesses to locate. However, the lot sizes of this particular development make it very difficult for today's modern companies with needs for outside storage and employee parking to fit in this zone. Therefore, this high traffic area with small lots often meets the needs of retail and service businesses, but zoning use requirements and development standards often make it necessary to seek variances for property use, lot coverage, and parking. It may be that at some point in time a zoning change for the area of additional allowed uses could be considered. In this case, the need for parking spaces to meet the ordinance for employees and customers creates the need to add some parking. Allowing the landscape trade off would allow the user of the property to meet or exceed the ordinance requirement of overall landscaping requirements.

Chairman Martin opened the public hearing by asking if anyone in the audience wished to speak for or against developmental standards variance request. There being no respondents, he asked for questions from the Board. There being no further questions from the Board, Chairman Martin requested staff's recommendation.

Mr. Getchell gave staff's recommendation for approval of the developmental standards variance with a minor change from that was presented in the staff report due to the petitioner's request this evening. For the front parking spaces, they would be a maximum of 10' x 18' instead of 9' x 18'. Mr. Getchell stated it is acceptable to have larger spaces by the ordinance. The three conditions were now as follows:

- a. A maximum of eight (8) standard parking spaces, 10' x 18' in size, or six (6) standard parking spaces 10' x 18' in size and one (1) handicap van accessible space, 16' x 18' in size, are permitted between the building and Commerce Drive.
- b. Two (2) qualifying species broadleaf trees, 2 ½ inch caliber, are required to be planted on-site, and in the front yard. Mr. Getchell explained this to be anywhere between the front foundation line of the building to the right-of-way line.
- c. All applicable Federal, State, and Local permits/approvals shall be obtained prior to construction/renovation, including but not limited to Site Development Plan Review.

Chairman Martin asked Mr. Paris if these conditions were acceptable, and Mr. Paris confirmed his awareness and acceptance of all conditions.

Mr. Barrow made a motion to approve of the developmental standards variance associated with ZB 2019-16, with three conditions as outlined by staff. Ms. Sullivan seconded the motion. The motion passed, 5-0.

ZB 2019-17 (V) – 370 E Jefferson St – Mr. Getchell presented this case of three developmental standards variance requests at 370 E. Jefferson Street. The applicants are Craig and Kim Smith. The property is zoned both RTN (Residential: Traditional Neighborhood) and MXD (Mixed Use: Downtown Center). When there is split zoning, the zoning that covers the majority of the property is applied to the entire property. In this case that is the RTN zoning. In the Comprehensive Land Use Plan, this property is also split between Core Residential and Downtown Development with Core Residential being the larger area. The details of the petitioner's requests relate to their desire to place a Pullman passenger rail car on the property as a permanent structure to be used as an extension of the railway museum. The first developmental standards variance request is to allow an expansion on the property of a legal non-conforming use. The second is to allow a new structure in connection with an existing legal non-conforming use of land. The third is to be permitted two primary structures on the lot. This property is the Hoosier Cupboard Candy and Snacks Depot.

Craig Smith presented their desire to preserve a 1912 Pullman smoking car as an extension to their art museum. The depot was moved in 1979 from Martin Place to their property over a third of an acre, so there is room to add the Pullman car. Mr. Smith went on to reference a letter submitted from Franklin Heritage complaining that the Pullman car would block view of their sign from Jefferson Street. Mr. Smith maintained that their sign can't be seen from Jefferson Street currently due to trees, but they would work with them to make it all possible. It will be completely fenced and landscaped.

Mr. Smith addressed the decision criteria:

1. General Welfare: They don't see it as injurious in any way. It will be beautifully fenced and landscaped. It will be a walking, learning exhibit. They maintained it will be a community asset.
2. Adjacent Property: It will be a restored passenger car in a park-like setting. The car will be painted a deep blue in Baltimore and Ohio rail car colors with B and O markings. It will complement the depot.
3. Practical Difficulty: It will add to the mission of the railroad museum started in 1979 and to public education.

Ms. Gray clarified this to already be a legal non-conforming use, so they couldn't do this today. It is there because it began in 1979, and they are now trying to expand a legal, non-conforming use. She also stated the letter in opposition from Franklin Heritage is included as Exhibit One.

Mr. Martin opened the public hearing by asking if anyone in the audience wished to speak for or against the petition. Mr. Paris presented his memory of the history behind the establishment of the the first building and asked what is the non-conforming use. Ms. Gray explained that today the depot could not be placed there for a number of reasons and that it is grandfathered in. She went on to state, present day you cannot have two structures on one piece of property and you are not to expand a legal non-conforming use. Mr. Paris expressed his opinion that if done correctly it would be a good asset to the community.

Rev. Martin asked who owns the caboose. Kim Smith answered the city owned the caboose. Mr. Smith explained that originally it was to have been placed on their property, but through city proceedings it was placed at its current location. Because the Smiths were not a non-profit, the city could not give them the car. Ms. Gray added that statutory regulations are that the city cannot give their own property to a profit unless in compliance with public bidding laws. Ms. Gray stated it can be given to a non-profit.

Mr. Barrow asked what would happen in the future if owners change and no one can do anything about it because it's on private property. Mr. Smith identified that his son plans to take it over but would be willing to put a stipulation in any agreement with the city that the Smiths would assume responsibility if needed to destroy or scrap or move it should their use of it end at some point. Ms. Gray focused that the question is a land use one and not a policy question. She stated the issue is: does the request in its current form meet the statutory criteria the Board is bound by.

Chairman Martin asked if there were any additional questions from the Board. There being none, Chairman Martin requested staff's recommendation.

Mr. Getchell presented staff's recommendation for denial based on the criteria for General Welfare and the Use and Value of Adjacent Properties. Ms. Gray requested Mr. Getchell elaborate on the recommendation for the record. Mr. Getchell stated the location is in a highly residential area to the north and east. The access from the north is primarily through a residential neighborhood with one-way streets. Ms. Gray asked if fencing would be permitted. Mr. Getchell confirmed fencing is permitted. Mr. Getchell went on to state unfamiliar vehicular traffic would be increased to a residential area causing harm to the health and public safety of that area. He also stated specialty exterior restoration and maintenance of a 95-year-old rail car could be an issue in the future, potentially causing unsafe buildings issues. He stated the a lot of the same rationale can be applied to the criteria for General Welfare and Use & Value of Adjacent Property. He stated that staff felt approval would be a detriment to the use and value of Madison Street Salvage and their ability to function without any visibility from Jefferson Street.

Mr. Alsip made a motion for denial of the three developmental standards requests based on reasons as set forth by staff. Mr. Barrow seconded the motion. The motion for denial passed, 5-0.

Other Business

Mr. Getchell presented the proposed 2020 calendar of BZA meetings. There were no changes in the regular meeting rotation. A motion of approval was made by Mr. Barrow and seconded by Ms. Sullivan. Passed, 5-0.

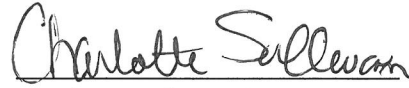
Adjournment:

There being no further business, the meeting was adjourned at 6:46pm.

Respectfully submitted this 5th day of January, 2020.

A handwritten signature in black ink, appearing to read "Jim Martin", written over a horizontal line.

Jim Martin, Chairman

A handwritten signature in black ink, appearing to read "Charlotte Sullivan", written over a horizontal line.

Charlotte Sullivan, Secretary