

MINUTES

City of Franklin, Indiana BOARD OF ZONING APPEALS

October 7, 2020

Members Present

Jim Martin	Chairman
Phil Barrow	Vice-Chairman
Charlotte Sullivan	Secretary
Brian Alsip	Member

Members Absent

Ashley Zarse	Member
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Others Present

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

Call to Order

Jim Martin called the meeting to order at 6:00 pm. Happy birthday, Mr. Martin!

Roll Call & Determination of Quorum

Approval of Minutes

Phil Barrow made a motion to approve the minutes of September 2, 2020. Charlotte Sullivan seconded. The motion passed unanimously, 3-0.

Swearing In

Ms. Gray swore en masse anyone planning to speak.

Old Business

None.

New Business

ZB 2020-13 (V) – Timbercreek Investments, LLC – Alex Getchell introduced the developmental standards variance request for the property on Centerline Road, approximately 850 feet south of the intersection of State Road 44. The applicants are Terry Johnson with Timbercreek Investments, LLC and Greg Leugers. The property is zoned A (A: Agriculture) and the Comprehensive Plan calls for agricultural land uses. The developmental standards variance request is to allow minimum side yard primary structure setback of 10 feet and a minimum of 50 feet is required. The property is in the extraterritorial buffer zone area and is currently a vacant property.

Mr. Getchell also presented a request for continuance received this afternoon from Tim Holmes, an adjoining property owner on the notification list. Mr. Holmes has been out of state for two weeks and did not receive notice beforehand. Ms. Gray explained the three procedural ways a continuance can be legally requested, one of which is a request such as presented by Mr. Holmes, and it is at the discretion of the Board whether to grant the request. Joanna Myers further explained that Mr. Holmes understands should the Board deny his request for continuance. Ms. Sullivan asked if Mr. Holmes communicated any view on the case. He did not. Ms. Sullivan made a motion to deny the continuance request due to lack of explanation from Mr. Holmes for his request. Mr. Barrow seconded. The motion to deny the continuance request passed unanimously, 3-0. Ms. Gray followed up with an explanation that as a five-member board, with only three members present, the any official action taken on ZB 2020-13 is required to be a unanimous vote of 3 to 0.

Member Brian Alsip entered the meeting at 6:10 p.m., now allowing for a 3-1 vote on the case. Ms. Gray stated no substantive information on the case has yet been presented at this point in the meeting.

Mr. Getchell explained that the petitioner is proposing a single family residence with a living area roughly 40 feet by 60 feet in area with an attached 50-foot by 60-foot garage and an eight-foot front wrap porch facing east and on the side facing north. For the setback variance, all portions of the house would have to be outside of the 50-foot setback on the side. They are indicating a desire to possibly be as close as 10 feet to the south side property line, no closer than 50 feet to the back and the house would be on an angle roughly 90 feet from the back property line to the northwest corner of the house. Staff also presented additional site plans that were potential options staff had come up with, that did not encroach on a setback or easement. In each staff presented option, the house footprint would be the same as proposed by the petitioner, but in different locations. Mr. Getchell stated the lot slopes from the back to the front and he stated some fill dirt has already been brought in.

Petitioner Greg Leugers, owner of Franklin Keller-Williams, represented Timbercreek Investments. He was not a part of the development of these properties but is representing them in the sales. Jimmy Buck is the purchaser of the two acres and has accompanied Mr. Leugers in the presentation. Mr. Leugers addressed the decision criteria, as follows:

General Welfare – He stated this is not an issue, as stated in the staff report.

Adjacent Property – Mr. Leugers has spoken to Dr. Brickler, the owner of Briarcrest and the 32 acres immediately adjacent to the property. He purchased it a month ago and has no issues with the request. He is willing to sign and have notarized his statement. Mr. Leugers further stated his finding that 14 homes in this area are within the 50 feet. Several are within 15 feet and some are over the property line. The county guidelines are 10 feet. The reason dirt has been moved is that the owner gave Mr.

Buck permission to see how he can fit the home on the property that will not cost too much. The lot is not steadily sloping. Mr. Buck is not building the home on the side of the hill but on the top of the hill.

Practical Difficulty – It would be significant economic injury to the homeowner that he can't afford to be required to put the house within the 50' setback. They would be willing to do 15 feet instead of 10. The reason for the 50' by 60' garage is that there is no other place on the property for it to be placed.

Chairman Martin opened the public hearing but there was no one else in the audience. Ms. Gray asked if there are other lots in this subdivision. Ms. Myers reviewed the historic activity for this subdivision. In 2016 the owners of Timbercreek wanted to look at dividing the properties on the north and south sides of 44 and west side of Centerline Road, so they filed a petition with the City of Franklin for rezoning. They were looking to divide several hundred acres in to 15 or 16 lots. They withdrew that petition. They

submitted a new application for rezoning of the same property still as Timbercreek in 2018 for the same reason as in 2016, and it was withdrawn again. Ms. Gray followed up to ask if there is the anticipation that others would come in for other lots. Ms. Myers said, yes, the properties have already been divided and surveys recorded for four different types of subdivisions. Some were minor that went through the County's process and some were roadside subdivisions. Ms. Gray asked if the other lot owners have been advised of the 50-foot restriction and Mr. Leugers confirmed they have. Two of the three owners have sold. The third lot is being worked on currently. Ms. Myers added that the additional property owner has submitted plans for a footprint of 104 feet when the building envelope is 100 feet. It is a family compound situation, and both Ms. Myers and Mr. Getchell added that there are multiple issues with that build beyond just the 50-foot setback restriction.

Mr. Barrow stated that voting in favor on this case could be setting a precedent. Ms. Myers has been having conversation with the property owner since June or July, so they have been aware for quite some time. Mr. Buck added some construction details required of him to meet the 50-foot setback on the slope of the property. There was additional dialogue between Ms. Sullivan and Mr. Buck with regards to the location of the septic behind the house. Mr. Alsip asked why it can't be built within the zoning guidelines. Mr. Leugers confirmed it to be due to slope of the property and cost. Mr. Alsip asked what the difference in cost is between the two builds. Ms. Myers stated the utility easement cannot be built in at all. Mr. Getchell's clarified that staff's alternate building locations do not encroach the easement or setbacks.

There being no further questions or discussion, Chairman Martin requested staff's recommendation.

Mr. Getchell gave staff's recommendation for denial as outlined in the staff report based on adjacent property and practical difficulty, which staff finds is self-imposed. He stated the incompatibility of uses between agricultural and residential would affect adjacent properties. He stated permitted residential structures could be built at the property, and represents a self-imposed practical difficulty.

Mr. Barrow stated that the only issue is cost. Neither alternate site plan presented by Mr. Getchell changed the structure. Mr. Barrow asked if there was any negotiation between 15 feet and 50 feet that would be workable. Mr. Getchell cited staff's assessment that the variance request was greater than minimally necessary as put forth in the staff report. Staff believes a variance of less severity could potentially be possible if not completely unnecessary. Mr. Getchell added that accessory structures are permitted at a 25-foot setback from the rear and sides. A detached structure could be 25 feet closer than the house could be. Ms. Myers summarized. As the pole barn could be detached from the house and placed within the 25-foot setback and the house built within the 50-foot setback, all restrictions would be met and a variance not required, thus the practical difficulty does not exist.

Ms. Sullivan and Mr. Alsip both spoke to the establishment of a precedent and the extreme request from 50 feet to 10 feet all based on the only reason of cost. Mr. Leugers asked if the precedent has not already been set with the homes in the area that are closer than 50 feet. Ms. Myers explained that they were already existing before the zoning classification. Mr. Getchell reported that no permits have been issued for those homes to be in those locations under the current regulations, as they too would have required variances.

Mr. Alsip made a motion for denial due to lack of practical difficulty outside of economic gain. Mr. Barrow seconded. The motion for denial passed unanimously, 4-0.

Other Business

Adjournment:

There being no further business, the meeting was adjourned.

Respectfully submitted this 4th day of November, 2020.



Jim Martin, Chairman

Charlotte Sullivan, Secretary