



## 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 25, 2022  
**Re:** Cases **ZB-22-1 (V) | 260 Branigin Rd | Hinesley**

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#### REQUESTS:

**Case ZB-22-1 (V)...Hinesley.** A petition by Matthew & Kaitlan Hinesley, a request for two Developmental Standards Variances from the City of Franklin Zoning Ordinance, 1.) Article 10, Chapter 4, Nonconforming Uses, to allow a new structure (detached garage) in connection with an existing legal nonconforming use of land (single-family residential), in the MXC: Mixed-use Community Center zoning district, and 2.) Article 7, Chapter 3, Accessory Structure Standards, to allow the accessory structure to be located within a front yard. The property is located 260 Branigin Rd.

#### PURPOSE OF STANDARD:

The “MXC”, Mixed Use: Community Center zoning district is intended to provide locations for a variety of small-to-mid-sized businesses and institutional facilities that serve the entire Franklin-area community. This district should be used alone and in combination with other zoning districts to create areas for community shopping, entertainment, services, and public gatherings.

#### ZONING:

##### Surrounding Zoning:

North: RMH: Residential, Mobile Home Park  
South: RSN: Residential, Suburban Neighborhood  
East: MXC: Mixed-use, Community Center  
West: RT-1: Residential, Traditional One

##### Surrounding Land Use:

North: Pennington’s Mobile Home Park  
South: Branigin Creek Subdivision  
East: Large Lot Single-family Residential  
West: Rural Residential/Agricultural

#### CONSIDERATIONS:

##### Proposed Use

1. Matthew & Kaitlan Hinesley, Petitioners, reside in an existing single-family home at 260 Branigin Rd, which was constructed in 1960, prior to the current zoning map and standards. The property is now zoned MXC: Mixed-use, Community Center, and single-family uses are no longer permitted; therefore, the use is considered a legal non-conforming use.
2. Petitioner is proposing to construct a new 25’ x 34’, three-car detached garage on their residential property. The proposed garage would be setback approximately 110 feet from Branigin Rd, while the existing house is setback approximately 150 feet. [[Exhibit A: Building Elevations](#) and [Exhibit B: Site Plan](#)]

##### Nonconforming Uses – Expansions

3. 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.”

4. According to the Johnson County Assessor's data, the existing residence has 1,767 sq. ft. of living area; therefore, according to Article 10, Chapter 4, petitioner is permitted to expand the residence by up to 883 sq. ft.
5. Petitioner's proposed detached garage expansion of 850 sq. ft. is below the 50% maximum expansion area; therefore, it does qualify as the one permitted expansion in a 5 calendar year period.

#### **Nonconforming Uses – New Structures**

6. According to Article 10, Chapter 4, "no new structure shall be constructed in connection with an existing legal nonconforming use of land."
7. Variance (1.): *Petitioner is proposing to construct a 25' x 34' detached garage southwest of the house, near the existing drive, and with the garage located closer to the road than the residence, by approximately 40 feet. [Exhibit A: Building Elevations and Exhibit B: Site Plan]*

#### **Accessory Structure in Front Yard**

8. According to Article 7, Chapter 3, No accessory structure shall be permitted in any front yard, or within the required side and rear yard setbacks.
9. Variance (2.): *Petitioner is requesting a variance to allow an accessory structure (detached garage) to be located in the area designated as a front yard by the Zoning Ordinance. In this case, the front yard area is all of the subject property which is closer to the right-of-way of Branigin Road than the south foundation line of the existing residence. [Exhibit A: Building Elevations and Exhibit B: Site Plan]*
10. *Petitioner is requesting to encroach into the front yard area approximately 40 feet. Petitioner's residence is setback approximately 150 feet; the proposed garage would be setback approximately 110 feet.*

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

11. The 2013 Franklin Comprehensive Plan, Land Use Plan, identifies this area as Community Activity Center. "Community activity centers area intended as areas of mixed land uses that provide gathering places and goods and services for the entire community. Community activity centers may include churches, schools, community parks, grocery stores, gas stations, shopping centers, offices, banks and restaurants. Community activity centers may also include residences located on the upper floors of otherwise commercial buildings. Community activity centers are generally located along major streets and at prominent intersections where they are readily accessible by people from throughout the community."
12. 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.
13. 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\*\*)

- - Begin on Next Page - -

## **CRITERIA FOR DECISIONS – DEVELOPMENT STANDARDS VARIANCE:**

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, morals, or general welfare of the community. The neighboring property to the east, 240 Branigin Rd, has a residence and a detached garage (26' x 30') setback approximately 105 feet and 80 feet, respectively. Petitioner's proposal to construct a detached garage (25' x 34') in the front yard and setback 110 feet, is situation already occurring on a property immediately adjacent, except petitioner's garage would be setback 30 feet farther from Branigin Rd, than the neighboring garage. Approval to allow a new structure in connection with a legal nonconforming residential use will not be injurious to the general welfare, as the use is permitted one expansion every five years; if petitioner was attaching the same 25' x 34' garage to the residence, no variance would be necessary.

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 the approval of the proposed variances will not adversely affect the use and value of adjacent property owners. The subject property, albeit zoned Mixed-use, Community Center, is surrounded by residential uses. Furthermore, the adjoining property to the east, 240 Branigin Rd, has a residence and a detached garage (26' x 30') setback approximately 105 feet and 80 feet, respectively. Petitioner's proposal to construct a detached garage (25' x 34') in the front yard and setback 110 feet, is situation already occurring on a property immediately adjacent, except petitioner's garage would be setback 30 feet *farther* from Branigin Rd than the neighboring garage. Approval to allow a new structure in connection with a legal nonconforming residential use will not adversely affect the use and value of adjoining property, as the use is permitted one expansion every five years; if petitioner was attaching the same 25' x 34' garage to the residence, no variance would be necessary.

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. Petitioners are permitted an expansion of up to 50% of the living area of the residence; however, the ordinance prohibits the construction of a new structure. If petitioners were attaching the same garage to the existing residence, no variances would be required, as the residence is setback far from the road and no new structure would be constructed; therefore, staff finds the strict application of the ordinance will result in practical difficulties in the use of the property.

## **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 placement/construction, including but not limited to an Improvement Location Permit ("building permit").
- b. The detached garage structure shall not be used as a dwelling unit.