

## MINUTES

### City of Franklin, Indiana BOARD OF ZONING APPEALS

October 5, 2022

#### **Members Present**

Jim Martin  
Phil Barrow  
Ashley Zarse

Chairman  
Vice Chairman  
Secretary

#### **Members Absent**

[Vacant Appointment]  
Brian Alsip

Member  
Member

#### **Others Present**

Alex Getchell  
Lynn Gray

Senior Planner I  
Legal Counsel

#### **Call to Order**

Jim Martin called the meeting to order at 6:04 pm.

#### **Roll Call & Determination of Quorum**

#### **Approval of Minutes**

Phil Barrow made a motion to approve the September 7, 2022 minutes. Ashley Zarse seconded. The motion passed unanimously, 3-0.

#### **Swearing In**

Lynn Gray swore en masse anyone planning to speak.

#### **Old Business**

None.

#### **New Business**

**ZB-22-8 (SE/V) – 929 E. Davis Dr.** – Alex Getchell presented the special exception and developmental standards variance request by Regina Miller. The property is located between State Road 144 and State Road 44. It is north of Creekside Elementary and the school bus yard. The petitioner owns two adjacent properties, both legal lots of record. The property is located in the Buffer Zone, the extra-territorial jurisdiction. It is outside of City Limits but still within the planning jurisdiction. The petitioner desires to build a second dwelling on the site for a disabled relative. The project would include 972 square feet of living space and the overall structure would be 1350 square feet with a single car garage. It will include one bedroom and one full bath. It will require a septic permit from the Health Department as it is not on city sewer. If this were located in Johnson County's jurisdiction, it would have been permitted by

their ordinance. It is under the City's Zoning Ordinance, so it requires a special exception and development standards variance. The property zoning is RSN (Residential: Suburban Neighborhood) and the Comprehensive Plan calls for the area to be small lot suburban residential. The special exception use is to allow an accessory dwelling structure in an RSN (Residential: Suburban Neighborhood) zoning district. The development standards variance is to allow the accessory dwelling to be located on the ground floor of an accessory structure. By the City's ordinance, if an accessory dwelling is to be located in an accessory structure, it is required to be above a detached garage or a workshop or something similar.

Ms. Miller explained that the detached dwelling is needed for her disabled mother. Ms. Miller is her only child. A second-floor dwelling would be more difficulty for Ms. Miller's mom. The property is approximately 4.2 acres. There is plenty of parking space without being on the street. Ms. Miller reviewed the decision criteria for the special exception, as follows:

1. General Welfare – Ms. Miller suggested that the explanation she had given up until this point addressed this criterion.
2. Development Standards – The drawings were submitted, and Dennis Henderson is the proposed contractor. It will be conducive to the surroundings.
3. Ordinance Intent – When Ms. Miller asked why the stipulation of second floor, she was told the city wants to discourage Airbnb and similar development. She has no commercial intent. Her hope is that in the future one of her many children would take the main property and that the accessory dwelling would be her home one day. It will be built to appropriate construction standards and aesthetics.
4. Comprehensive Plan – The house has been on the property since 1960. The neighborhood to the west has been agricultural through the years. She doesn't believe anything will be counter to the Comprehensive Plan.

Ms. Miller went on to review the decision criteria for the development standards variance, as follows:

1. General Welfare – It will promote the general welfare of the community since the intent is to care for a disabled family member.
2. Adjacent Property – One adjacent property is owned by Ms. Miller and used for agricultural. There is one house to the east on a comparable agricultural lot. There is a residence to the west. Other properties are the bus barn and elementary school.
3. Practical Difficulty – It would be an economic waste to be required to build a structure and place the dwelling on the second floor. It would increase the cost and would be even more prominent as the current structure is a one-story. Currently the view will be shielded from the street.

Mr. Martin opened a public hearing. Kimberly Kriech lives to the west and asked if the accessory structure could at any point be allowed to be sold separately from the primary structure. Mr. Getchell stated that property divisions are under county subdivision regulations. Ms. Gray explained that as Franklin has grown and annexed properties, the amount of buffer zone has decreased greatly and is reaching the point where it is no longer useful to the city. The legislature has passed a law allowing the county to retake their buffer zone if desired. The city has communicated to the county that if they would like the buffer zone back, the city is willing to work with them as the original intent is no longer feasible. If the city relinquishes the buffer zone, this case would be permitted as a matter of right.

Neighbor Sara Reese asked if the approving of this variance would set a precedent. Ms. Gray responded that each variance stands on its own and that the county is likely to take back the buffer zone. Ms. Reese followed up with the statement of the existence of covenants for part of their neighborhood. She asked if this property falls outside of these covenants. Mr. Getchell explained that the city does not get involved with covenants as that is a private commitment between private parties. Additionally, since it is outside of city boundaries, they would not get involved. Ms. Gray added that the city also cannot waive the covenants. Ms. Reese asked if there is anything that governs what the property can be used for. Ms. Gray responded that nothing other than it to be a residential use. Mr. Getchell added that staff is recommending that either the principal or proposed secondary residence on the site would have to be the residence of the property owner so they could not both be rentals.

Ms. Miller asked in the event the county took back the buffer if it would inhibit the future annexation of the property. Attorney Gray confirmed that annexations are separate from buffer zones. Ms. Miller also explained that her property pre-dates the subdivision covenants, so it is not governed by them. Ms. Gray further explained that there have been discussions with the county about the city relinquishing the buffer zone to them. There have been no discussions about annexation.

There being no further questions or person appearing before the Board, the public hearing was closed. There were no questions from the Board. Chairman Martin requested staff's recommendation.

Mr. Getchell gave staff's recommendation of approval for the special exception with five conditions.

- a. Special Exception approval is for a single accessory dwelling unit and runs with the subject property.
- b. The property owner's principle residence must be the property's primary or accessory dwelling.
- c. Expansions to the accessory dwelling unit living area square footage shall be prohibited beyond 1,000 square feet.
- d. A minimum of two off-street paved parking spaces are required to be provided per dwelling unit, on-site.
- e. All applicable federal, state, county, and local permits/approvals are required; including, but not limited to, compliance with all building, fire, and health codes.

Mr. Getchell pointed out that conditions b and c are directly aligned with the Johnson County ordinance requirements.

Mr. Getchell gave staff's recommendation of approval for the development standards variance with three conditions.

- a. Variance approval is for a single accessory dwelling unit on the ground floor of a detached accessory structure.
- b. Expansions to the accessory dwelling unit living area square footage shall be prohibited beyond 1,000 square feet.
- c. All applicable federal, state, county, and local permits/approvals are required; including, but not limited to, compliance with all building, fire, and health codes.

Ms. Miller agreed with all staff's recommended conditions. Ms. Zarse made a motion for approval of the special exception with staff conditions. Mr. Barrow seconded. Passed unanimously by roll call, 3-0.

Mr. Barrow made a motion for approval of the development standards variance with staff conditions. Seconded by Ms. Zarse. Passed unanimously by roll call, 3-0.

**ZB-22-9 (SE/UV) – 599 Earlywood Dr.** – Mr. Getchell presented the special exception and use variance requests by Scott and Michelle Graham. The property is located on the south side of Earlywood Drive, east of US 31. The property was the previous location of Moonlight Automotive. In 2015 Moonlight Automotive received a use variance for the property to do RV repair from the facility. Therefore, much of the facility is already set up similar to the petitioners' desired use. The petitioners have already purchased the property and plan to move their auto body shop to this location. They sold their previous wrecker business but still own a wrecker trucker they plan to keep. They would like to keep the option open for a wrecker business again in the future. This was the reason for the inoperable vehicle storage part of the request. There is an existing fence and gravel storage area and parking area already on site from Moonlight Automotive's use. The property is zoned IG (Industrial: General) and the Comprehensive Plan calls for the area to be manufacturing. The special exception use is to allow inoperable vehicle storage in the IG (Industrial: General) zoning district. The use variance request is to allow an auto repair and body shop use in the IG (Industrial: General) zoning district.

Mr. Graham explained that they purchased the property as an investment approximately two years ago. Moving their body shop to this location would put them closer to US 31. They will continue to retain and lease the Hamilton property. They do not need four acres for a body shop, and their current building is very spread out. The move will be a downsize, but it locates them in a nicer building closer to the street. They will improve the front fence. They will add five parking spaces in the front and a drive around to access the east side door. They also plan to pave part of the gravel lot. He addressed the decision criteria for the special exception.

1. General Welfare – There are like businesses across the street and the surrounding area. They will also be improving the landscaping, so it will look much nicer.
2. Development Standards – They have spoken with Mr. Getchell about updating the parking.
3. Ordinance Intent – It already had the special exception for the body shop or mechanical facility and inoperable vehicle storage. These vehicles go hand in hand with both the body shop and wrecker service.
4. Comprehensive Plan – The lot and building is small for manufacturing and fits in with the neighborhood.

He addressed the decision criteria for the use variance.

1. General Welfare – They will clean up the building and make it look better.
2. Adjacent Property – The area zoning is industrial or manufacturing and some of the neighboring properties fit within the same scope as their business.
3. Peculiar Situation – It is a small lot for industrial.
4. Unnecessary Hardship – There shouldn't be any hardships on any of their activity there. It's not going to effect the property value.
5. Comprehensive Plan – It doesn't affect.

Ms. Gray asked if there was already outside storage for the RV's. Mr. Getchell confirmed. Mr. Graham added that there was a 300 square foot area with a six-foot fence around it. They will raise the fence to eight feet and enhance it.

A public hearing was opened. There being no respondents, Mr. Martin closed the hearing and called for questions from the Board. No questions were asked. Chairman Martin requested staff's recommendation.

Mr. Getchell presented staff's recommendation for approval of the special exception with three conditions.

- a. Special Exception approval for inoperable vehicle storage, associated with the wrecker service and auto repair & body shop, shall run with the applicants at the subject property.
- b. The opaque fence construction must be consistent with the requirements of the zoning ordinance, with the fence and gate being 100% opaque and between six and eight feet in height.
- c. A minimum of one parking space must be provided for each employee on the largest shift and for each business vehicle stored on-site.

With the nature of the lot, how it is already developed, and petitioner's own plans staff has no concerns. Mr. Getchell stated as part of the zoning ordinance requirements, whenever there is a special exception use or use variance approval, the Board is required to define what parking is required.

Mr. Getchell also presented staff's recommendation for approval of the use variance with five conditions.

- a. Use Variance approval for an auto repair & body shop is limited to, and runs with the applicants, at the subject property.
- b. The opaque fence construction must be consistent with the requirements of the zoning ordinance, with the fence and gate being 100% opaque and between six and eight feet in height.
- c. All vehicles stored onsite, either pre-, during-, or post-repair, shall be stored within the enclosed fence storage area or inside the building, except during times of drop-off/pick-up by customers.
- d. A minimum of one parking space must be provided for each employee on the largest shift, for each business vehicle stored on-site, and for every 200 square feet in the body shop facility.
- e. At least one parking space reserved for disabled persons must be provided, consistent with the requirements of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, Chapter 4.1.2 (5)(a) and all applicable revisions.

Mr. Graham agreed to all staff's conditions. Mr. Barrow made a motion for approval of the special exception with conditions a. through c. Ms. Zarse seconded. Passed unanimously by roll call, 3-0.

Ms. Zarse made a motion for approval of the use variance with conditions a. through e. Mr. Barrow seconded. Passed unanimously by roll call, 3-0.

### **Other Business**

#### **Adjournment:**

There being no further business, Mr. Barrow moved to adjourn. Ms. Zarse seconded. Passed unanimously, 3-0.

Respectfully submitted this 7th day of December, 2022.

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Jim Martin, Chairman

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Ashley Zarse, Secretary