CITY OF FRANKLIN

DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT › DEPARTMENT OF ENGINEERING
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BZA Staff Report

To: Board of Zoning Appeals Members

From: Kevin Tolloty, Associate Planner

Date: December 22, 2011

Re: **Case ZB 2011-16 (UV)**

REQUEST:

Case ZB 2011-16 (UV)…Kim Murray. A request for a use variance from the City of Franklin Zoning Ordinance, Article 3, Chapter 6; to allow the conversion of a single family dwelling into a two-family dwelling in the Residential: Suburban Neighborhood (RSN) zoning district. The property is located at 1630 Graham Road.

PURPOSE OF STANDARD:

The "RSN", Residential: Suburban Neighborhood zoning district is intended to ensure the continued viability of suburban-style lots in existence on the effective date of this Ordinance. This district should only be used to maintain established setbacks and standards in suburban neighborhoods.

CONSIDERATIONS:

1. The case was heard at the November meeting. The petitioner requested that the case be continued to the January 2012 meeting in order to address the concerns discussed by the Board. The Board granted the continuous by a unanimous vote.
2. Staff spoke with the applicant on December 15, 2011 about whether an application for a variance from development standards would be filed in regards to the number of parking spaces required.
3. The application deadline was December 19, 2011 and there has been no application filed in regard to a variance from development standards for parking.
4. The building would not require an additional ingress/egress. The existing upper level ingress/egress would need to be completely walled off (separated) from the lower level dwelling unit.
5. Any additional building requirements would need to be addressed by the applicant before the possible use of a two-family dwelling.
6. The petitioner is requesting a use variance to allow the subject property to be converted to a two-family dwelling.
7. Two-family dwellings are a permitted use only in the Residential, Multi-Family (RM) zoning district.

8. A second story was added to the structure by the petitioner in 2009 which included two bedrooms, one bathroom, one living room and a laundry room.
9. Original drawings for the 2009 building permit included a kitchen, but were revised when it was found out that a use variance would be required in order to include the kitchen.
10. A two-family dwelling is defined as "A structure designed for occupancy by two families or other single units of housekeeping and therefore including no more than two dwelling units."
11. An accessory dwelling is defined as "A separate and complete secondary dwelling unit established in conjunction with and clearly subordinate to another dwelling that which serves as the primary use and/or structure."
12. Article 7, Chapter 3 of the Zoning Ordinance limits accessory dwellings to 1,000 square feet and under.
13. An accessory dwellings is listed as a special exception in the RSN zoning district, however, two-family dwellings require a use variance.
14. The sizes of the proposed dwellings are over 1,000 square feet each and therefore cannot be considered an accessory dwelling and must be treated as a two-family dwelling.
15. Article 7, Chapter 10 of the Zoning Ordinance states "Any use which is nonconforming in the zoning district in which it is located or is permitted by special exception or variance shall provide parking which is consistent with the use and the standards for the zoning district in which the use is permitted by this Ordinance. In no case shall the number of parking spaces required for non-conforming uses or those permitted by special exception or variance be solely based on the standards for the district in which they are located. The Board of Zoning Appeals shall specify the number of parking spaces for all uses permitted by special exception or variance consistent with the intent of this Chapter."
16. A minimum of 2.5 spaces per dwelling unit are required in the RM zoning district.

    2 dwelling units = 5 parking spaces
17. All required parking spaces must be designed to provide direct access for vehicles. In no case may areas which do not have direct access be considered a parking space meeting the requirements of this Ordinance (example: a residential driveway shall not be considered a parking space meeting the requirements of this Chapter if a parked vehicle in the driveway prevents direct access to a required parking space in a garage or carport).
18. A total of five (5) parking spaces would be required to be located onsite. Currently there is a one-car garage with a two-car wide driveway.
19. There is limited on-street parking available directly in front of the home.
20. Article 11, Chapter 3 states "Unless otherwise specified by the Board, use variance approvals shall be limited to, and run with the applicant at the location specified in the application."
21. 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.

22. The definition of an unnecessary hardship according to the 2004 City of Franklin Zoning Ordinance is: A hardship which is subject to relief by means of variance, such as those that result from exceptional topographic conditions, exceptional physical conditions of a parcel of land, or other characteristics of the property that are unique from those of adjoining property in the same zoning district. Hardships which are self-imposed, resulting from errors in judgment on the part of the property owner, or based on a perceived reduction in economic gain shall not be considered unnecessary hardships.

23. The 2002 Franklin Comprehensive Plan, Land Use Plan, identifies this area as Small-Lot Suburban Residential. "Small-lot suburban residential areas are intended to include primarily single-family detached residences. Other uses in small-lot suburban neighborhoods may include neighborhood and community parks and neighborhood-scale churches and schools. These neighborhoods are distinguished from large-lot suburban residential areas by lot size, setbacks, density, and possibly home size. A diversity of home sizes and designs is encouraged in these areas. Also encouraged is the occasional incorporation of accessory residences. In all cases, the design features of each home should provide materials, a scale, and other design elements that promote consistency in the neighborhood."

The surrounding zoning and land uses are as follows:

Surrounding Zoning:	**Surrounding Land Use:**
North: RSN, Residential: Suburban Neighborhood	North: Single Family Residential
South: RSN, Residential: Suburban Neighborhood	South: Single Family Residential
East: IG, Industrial: General	East: Undeveloped/Agricultural
West: RSN, Residential: Suburban Neighborhood	West: Single Family Residential

CRITERIA FOR DECISIONS:

(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 36-7-4-918.4) that:

DECISION CRITERIA

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:

The approval of the variance will be injurious to the public health, safety, morals, or general welfare of the community as there does not appear to be adequate off-street parking to suffice for the home to be converted into a two-family dwelling. The petitioner should explain how the off-street parking requirements will be met.

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:

The use and value of adjacent properties will not be affected in an adverse manner as the appearance of the property will not be significantly altered, with the majority of the work to be done internally, and the use will remain residential in nature.

3. ***Practical Difficulty: The strict application of the terms of the ordinance (will or <u>will not</u>) 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:

The strict application of the ordinance will not result in a practical difficulty as the petitioner may continue to use the property in its current form as a single family dwelling. The matter of a practical difficulty is that being unable to use the property as a two-family dwelling presents only a perceived restriction of the use of the property. In reality, the property is currently being used to its fullest capacity as a single family dwelling, which is consistent with the surrounding neighborhood. In addition, at the time the second story was added in 2009, the petitioner was aware that the size of the addition would require it to be classified as a two-family dwelling and would be required to obtain a use variance to make the second story a completely separate dwelling unit. The petitioner elected to add the second floor with everything but a kitchen, knowing that a use variance would still be required to install a kitchen and rent it out as a separate unit. Therefore, Staff finds that the practical difficulty is based on the perceived reduction of, or restriction on, economic gain. The petitioner should explain how approval of this variance will result in a practical difficulty in the use of the property.

4. ***Unnecessary Hardship: The strict application of the terms of this Ordinance (will or <u>will not</u>) constitute an unnecessary hardship as they are applied to the property for which the variance is sought.***

Staff Finding:

Staff finds that the strict application of the terms of the Ordinance will not result in an unnecessary hardship as the petitioner may continue to use the property in its current form as a single family dwelling. An unnecessary hardship would imply that that a denial of the variance would eliminate any gainful use of the property. While it would be beneficial to the petitioner for the variance to be approved, it is not necessary for to the gainful use of the property. The petitioner should explain how approval of this variance will result in an unnecessary hardship in the use of the property.

5. ***Comprehensive Plan: The granting of the variance (<u>does</u> or does not) interfere substantially with the Comprehensive Plan.***

Staff Finding:

The granting of use variance does interfere with the Comprehensive Plan as these areas are primarily for single family detached housing with appropriate neighborhood scale complimentary uses including parks, schools and occasional accessory dwellings. The main issue with this use variance is one of scale. A smaller (under 1,000 square foot) accessory dwelling would have been eligible for a special exception, but due to the size of the dwelling addition, it must be treated a two-family dwelling which does not meet the spirit of the area as described by the Comprehensive Plan.

Please Note: The City of Franklin Board of Zoning Appeals may impose reasonable conditions as part of its approval.

STAFF RECOMMENDATION

Based on the written findings above, staff recommends **denial** of this petition.

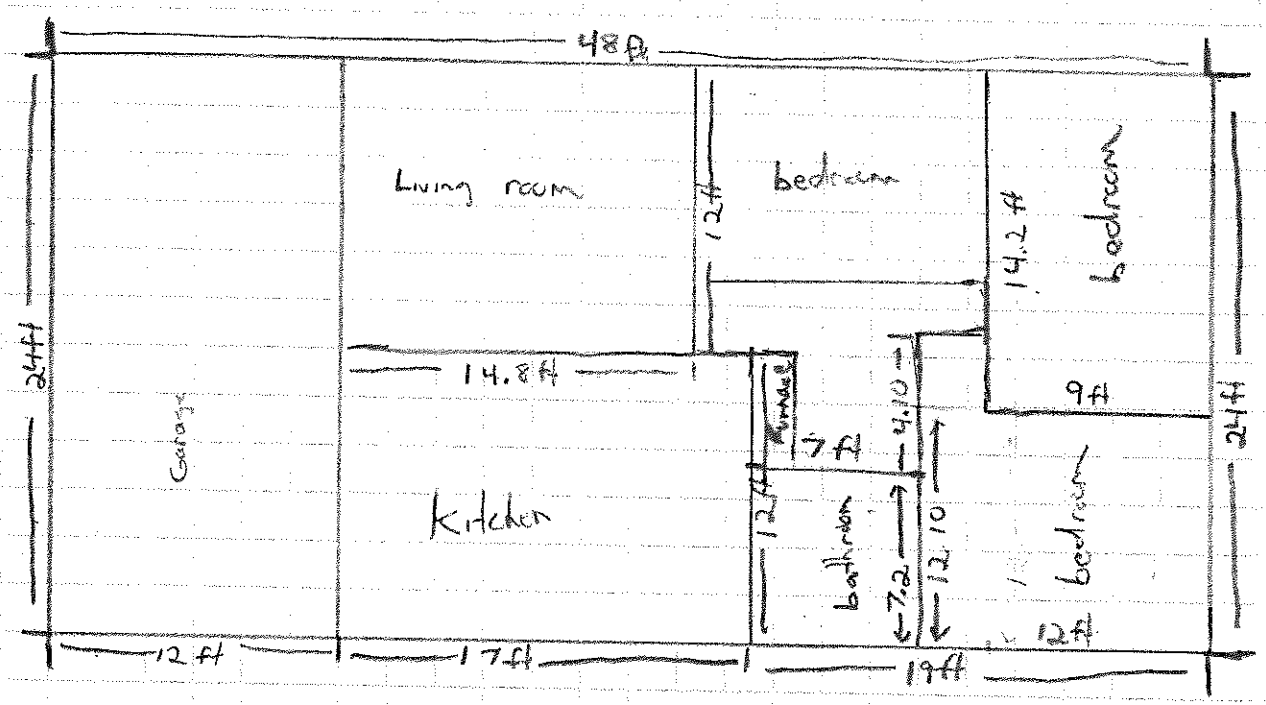
Site Photographs

1630 Graham Road – Front

Graham Road - On Street Parking

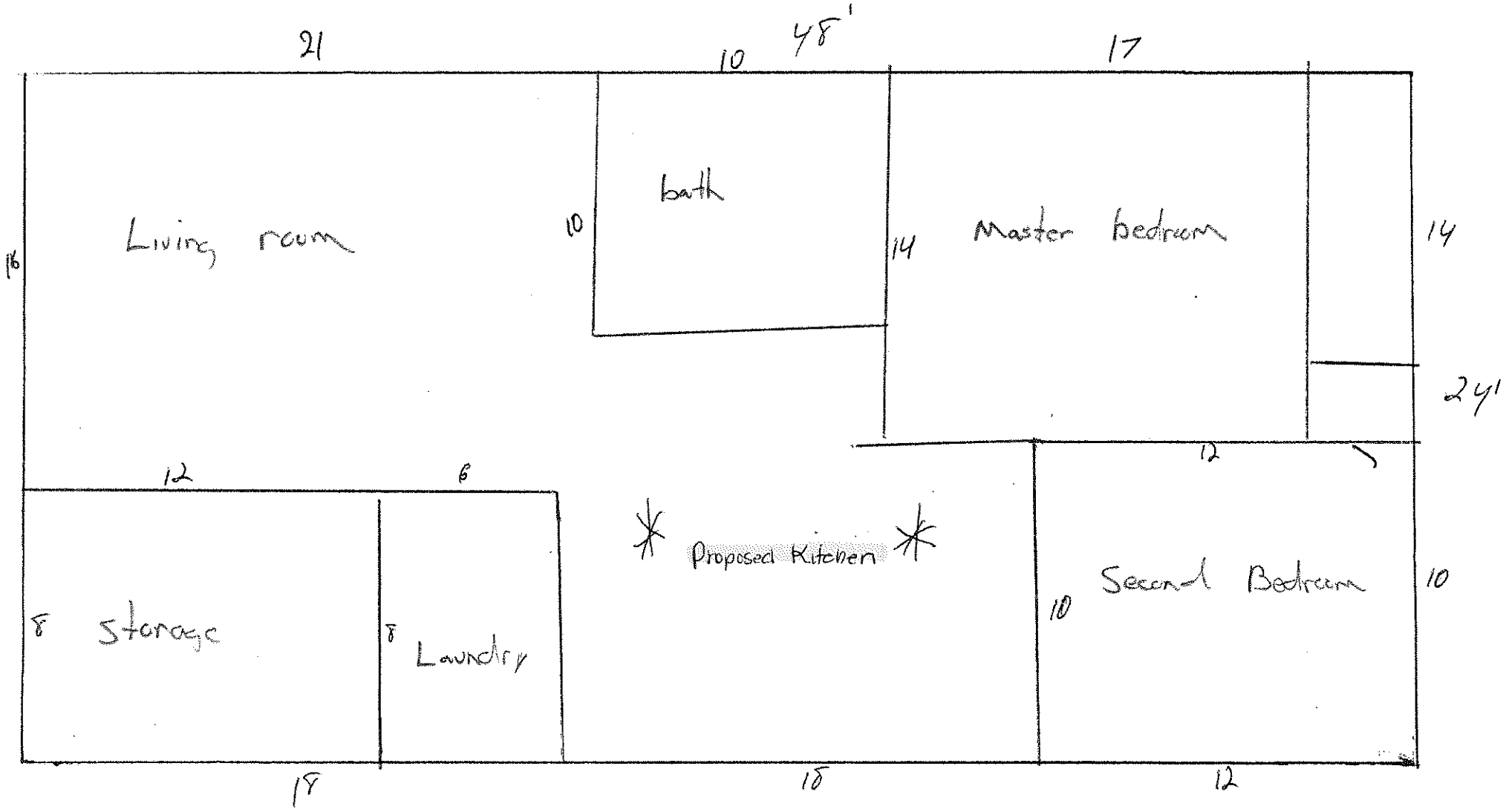
First Floor (EXISTING)

E ↑ 1 box = 2ft



1 INCH - 5 FEET

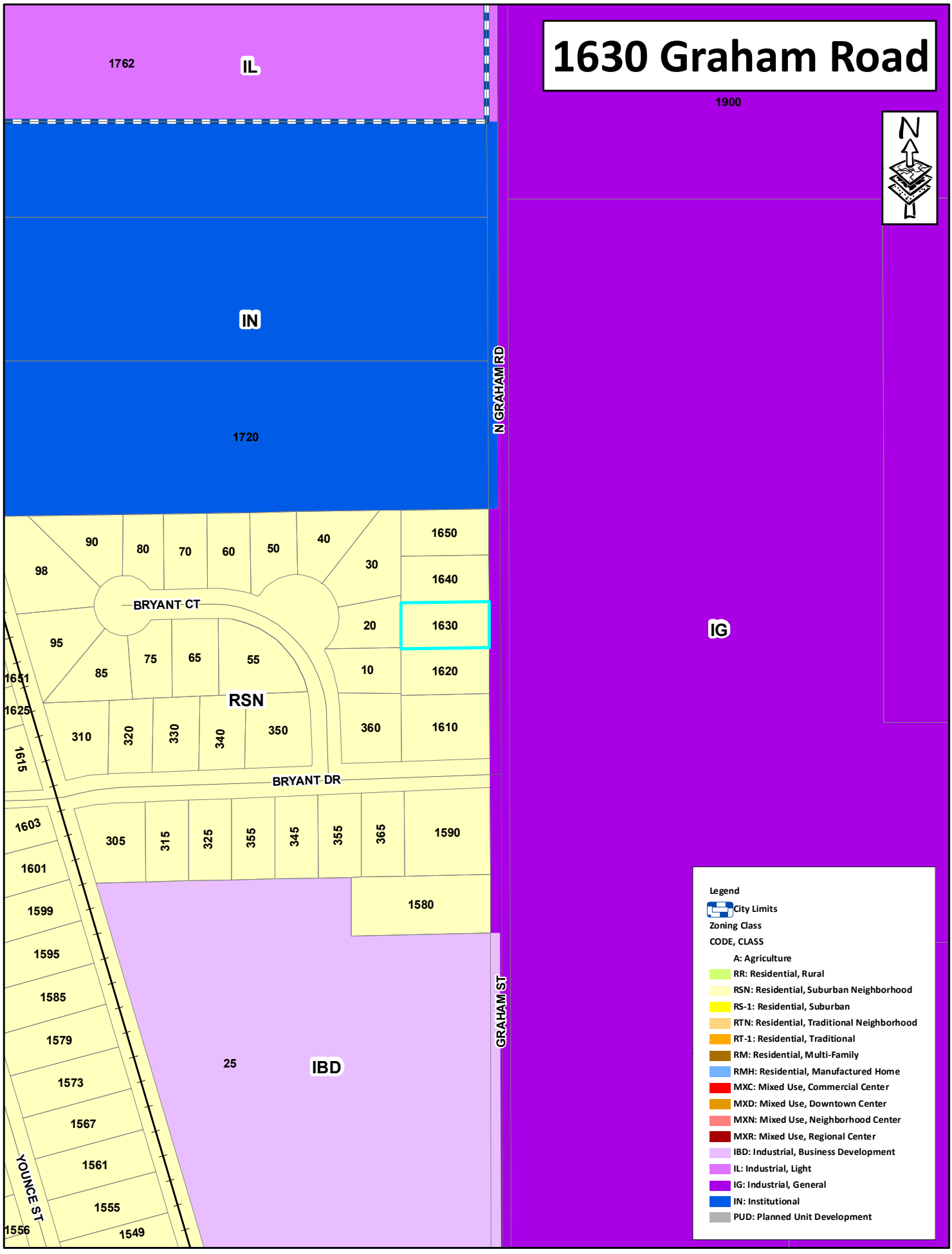
2ND FLOOR



1 inch = 40 feet

0 20 40 80 120 160 Feet

Created by: K. Tolloty - 10/11
Franklin Planning Dept.



1 inch = 200 feet

0 110 220 440 660 880 Feet

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