



CITY OF FRANKLIN

DEPARTMENT OF PLANNING & ENGINEERING

70 E. MONROE STREET › FRANKLIN, INDIANA 46131 › 877.736.3631 › FAX 317.736.5310 › www.franklin.in.gov/planning

BZA Staff Report

To: Board of Zoning Appeals Members

From: Joanna Myers, Senior Planner

Date: August 23, 2013

Re: Case ZB 2013-15 (AP) Rob Hoverman

REQUEST:

Case ZB 2013-15 (AP)...248 Kentucky Street. An administrative appeal of staff's interpretation of Article 12.3 and Article 7.15 Part 1 (A) of the City of Franklin Zoning Ordinance as it applies to the notice of violation (ZON 2013-044) sent regarding rocks placed adjacent to the pavement of Johnson Avenue, west of the residence located at 248 Kentucky Street. The subject property is zoned Residential: Traditional Neighborhood (RTN).

PURPOSE OF STANDARD:

The "RTN," Residential: Traditional Neighborhood zoning district is intended to ensure the continued viability of the traditional-style neighborhoods in existence on the effective date of the Zoning Ordinance (May 10, 2004). This district should be used to maintain contextually appropriate setbacks and standards in its traditional neighborhoods.

CONSIDERATIONS:

1. On June 14, 2013, staff received a call of concern that landscaping rocks had been placed along Johnson Avenue, north of Kentucky Street. Damage was caused to the vehicle owned by Austin Helms after he swerved to miss hitting a dog and ran into the rocks. A copy of the Franklin Police Department incident report is attached.
2. The public right-of-way of Johnson Avenue per the recorded plat is 50 feet in width. The attached aerial photo shows the approximate location of the public right-of-way and the property lines of 248 Kentucky Street.
3. Upon inspection on June 17, 2013, staff confirmed that the rocks are located within the right-of-way of Johnson Avenue and are not located on private property. See photos.



4. A notice of violation (ZON 2013-044) was sent to the petitioner regarding the placement of rocks adjacent to Johnson Avenue. A copy of the notice is attached.
5. The petitioner has filed an administrative appeal of staff's interpretation of Article 12.3: Immediate Public Risk Violations and Article 7.15 Part 1 (A): Fence, Hedge, & Wall Standards.
6. Article 12.3 of the Zoning Ordinance states that Immediate Public Risk Violations include:
Obstructions: Signs, structures, landscaping, or other materials placed in a public right-of-way, easement, or sight visibility triangle in violation of this Ordinance.
7. Article 7.15 Part 1 (A) states that "all fences, hedges, and walls may be permitted up to any property line. No fence, hedge, or wall may be placed in any right-of-way or required sight visibility triangle."
8. A fence is defined in Article 13.2 as "any structure, solid or otherwise, which is a barrier and is used as a boundary or means of protection, confinement, or concealment."
9. Correspondence from Robert & Jill Hoverman, Lynn Gray, City Attorney, and Justin Gifford, Attorney at Law has been attached for your reference.
10. Article 11.5 of the Zoning Ordinance outlines the process relating to Administrative Appeal Applications. It states: "The Board may grant an appeal of any decision, interpretation, or determination made by the Planning Director, other Plan Commission staff members, or any other administrative official or board charged with the duty of enforcing and interpreting this Ordinance."

Article 11.5(B)(4): "Possible Action: The BZA may grant, grant with modifications, deny, or continue the appeal.

- a. Granted: The appeal shall be granted if findings of fact are made consistent with the requirements of Section 11.5(C) of this Ordinance and Indiana State Code.
- b. Granted with Modifications: The appeal shall be granted with modifications if the Board of Zoning Appeals determines that the proper interpretation of the provision(s) that are subject to the appeal is consistent with neither the administrative decision nor the requested interpretation of the applicant.
- c. Denied: The appeal shall be denied if findings of fact are made supporting the administrative decision.
- d. Continued: The appeal shall be continued based on a request by the Planning Director or applicant; an indecisive vote; or a determination by the Board that additional information is required prior to action being taken on the request. The continuing of all applications shall be consistent with the adopted Rules and Procedures of the BZA."

Article 11.5(C): "Decision Criteria: The Board shall only grant an appeal of such an administrative decision based on a finding, in writing, that the decision of the administrative person or board was inconsistent with the provisions of this Ordinance."

IC 36-7-4-919(d) states: "Upon appeal, the board may reverse, affirm, or modify the order, requirement, decision, or determination appealed from. For this purpose, the board has all the powers of the official, officer, board, or body from which the appeal is taken."



Franklin Police Department

Deputy Report for Incident 13060665F

Nature: Civil
Location: LFR3

Address: Johnson Ave & Kentucky St
Franklin IN 46131

Offense Codes:

Received By: DeVore, T

How Received: T

Agency: FPD

Responding Officers:

Responsible Officers: Stalets,S

Disposition: CLE 06/13/13

When Reported: 11:18:06 06/13/13

Occurred Between: 11:17:56 06/13/13 and 11:17:56 06/13/13

Complainant: 248569

Last: Helms

First: Austin

Mid: T

Race: W

Sex: M

Offense Codes

Reported: TAPD Traffic Accident, Prop Damage

Observed: TAPD Traffic Accident, Prop Damage

Additional Offense: TAPD Traffic Accident, Prop Damage

Circumstances

LT30 Street-Residential Area

Responding Officers:

Stalets,S

Unit :

F15

Responsible Officer: Stalets,S

Received By: DeVore, T

How Received: T Telephone

When Reported: 11:18:06 06/13/13

Judicial Status: CIV

Misc Entry: sl

Agency: FPD

Last Radio Log: 11:40:03 06/13/13 CMPLT

Clearance: CRO Cleared, Responsible Officer

Disposition: CLE **Date:** 06/13/13

Occurred between: 11:17:56 06/13/13

and: 11:17:56 06/13/13

Involvements

Date	Type	Description
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Narrative

Civil matter concerning large rocks placed along Johnson Avenue that the complainant struck when he swerved to miss a dog. The rocks were placed there by the occupants of 248 Kentucky Street to alleviate problems with unwanted vehicles parking in their yard. The complainant vehicle sustained some scratches to the front passenger corner. It also appears (from the direction of the front tires pointing outward) that some type of control arm was also possibly bent or damaged.~Stalets

Date Created: 8/26/2013



Parcel ID	41-08-14-042-008.000-009	Alternate ID	5100 14 31 092/00	Owner Address	HOVERMAN ROBERT R & JILL E
Sec/Twp/Rng	n/a	Class	Res 1 fam dwelling platted lot		248 KENTUCKY ST
Property Address	248 KENTUCKY ST FRANKLIN	Acreage	0.13		FRANKLIN, IN 46131-1803
District	009				
Brief Tax Description	HAMILTON & OYLER ADD LOT 8				
	(Note: Not to be used on legal documents)				

Last Data Upload: 8/24/2013 11:20:44 PM

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June 17, 2013

Robert & Jill Hoverman
248 Kentucky Street
Franklin, IN 46131

RE: ZON 2013-044 (248 Kentucky Street)

To Whom It May Concern,

On June 14, 2013, we received a call of concern at our office that landscaping rocks have been placed within the right-of-way of Johnson Avenue. Upon inspection on June 17, 2013, we have confirmed that the placement of these rocks are an obstruction of the public right-of-way and present a potential risk to public safety and welfare resulting in a violation of Article 12.3 of the City of Franklin Zoning Ordinance.

Immediate Public Risk Violations shall include:

Obstructions: Signs, structures, landscaping or other materials placed in a public right-of-way, easement, or sight visibility triangle in violation of this Ordinance.

Remedial Action Required:

- **We request the immediate removal of these rocks from the right-of-way. They may be placed on private property (east of the stop sign and north of the sidewalk) if desired.**

We will revisit the area on July 1, 2013 at 8:00 a.m. If at this time and date they have not been removed, the City will remove and dispose of them as outlined in Article 12.3 of the Zoning Ordinance.

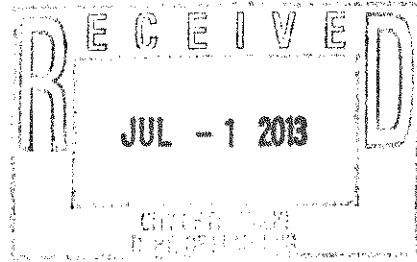
We thank you in advance for your attention to this matter. If you have any questions, please contact the Department of Planning & Engineering as soon as possible at 736-3631.

Respectfully,

Travis Underhill, PE
City Engineer

June 25, 2013

Ms. Lynn Gray
City Attorney
City of Franklin
70 E. Monroe Street
P.O. Box 280
Franklin, IN 46131



Re: Alleged Zoning Violation
ZON 2013-044
248 Kentucky Street
Franklin, Indiana

Ms. Gray:

This letter shall serve as written appeal according to Franklin Code 17.48.050 for full and immediate reversal of the notice of violation issued on June 17, 2013 for the address listed above. It is our understanding that you, as counsel for the City of Franklin, directed code enforcement to issue the notice of violation.

The zoning ordinance does not in any way prohibit the use of landscaping rocks. The violation is defined as

Any violation of this Ordinance that presents an immediate risk to the health, safety, or welfare of the public or to property within the community may be corrected by the Planning Director, or a person, firm, or organization selected by the Planning Director without prior notice to the property owner or other person responsible for the violation

Obstructions: Signs, structures, landscaping or other materials placed in a public right-of-way, easement, or sight visibility triangle in violation of this Ordinance

The rocks are not a sight obstruction because they are less than the 2 and ½ feet restriction established in the 17.32.130 - Sight visibility standards.

These general sight visibility standards apply to all zoning districts:

A.

Sight Visibility Triangle Required. All properties shall maintain an area (the "sight visibility triangle") at every intersection of an adjoining street with other streets and entrance drives. The sight visibility triangle shall be free of structures, vegetation, signs (other than street signs), and other opaque or partially opaque objects between a height of two and one-half and twelve (12) feet measured from the nearest top-of-curb (or edge of pavement where curbs are not present).

Mr. Underhill, the signatory representative of the City on the violation letter, in a telephone conversation on Thursday June 20, 2013, attempted ineffectively to bolster the alleged violation by stating that landscaping rocks were not allowed within the City Code. In fact Section 17.08.020 provides the following definition for allowable landscaping without restriction on location:

"Landscaping" means the improvement of a lot with grass, shrubs, trees, and other vegetation and/or ornamental objects. Landscaping may include pedestrian walks, flower beds, berms, fountains and other similar natural and manmade objects.

When confronted with this information, Mr. Underhill stated that these landscaping rocks were obstructing access to utilities in the right of way. This is also untrue, as the City or its subcontractors successfully accessed and maintained the storm drain located along the right-of-way in question during 2012. Additionally, should the buried utilities require access, adequately sized earth moving equipment would be required to conduct such subsurface activities and remove the rocks with little effort. The only other remaining utilities requiring access from the right-of-way in question is overhead electric and communication cables. These utilities require of the use of a bucket truck, which parks on the road. The communication cables have also been successfully accessed by these means several times in the last year.

The crux of the matter is that when confronted by the fact that the definition of an EMERGENCY is an immediate risk, Mr. Underhill's response was that the rocks represented an "immediate potential risk." As individuals who have professionally assessed risk, we are completely baffled as to what constitutes immediate potential risk.

It is outrageous to think the right-of-way in Franklin or any well minded community would be required to make non-roadways safe for vehicular traffic whose drivers fail to control those vehicles. We thereby demand an immediate and complete reversal and release from the violation.

Sincerely,



Robert Hoverman
Owner



Jill Hoverman
Owner

Cc: Justin Gifford, Attorney-at-Law
Joe McGuinness, Mayor
Travis, Underhill, City Engineer
Richard Wertz, City Council



JOHNSON, GRAY & MACABEE
ATTORNEYS AT LAW

Russell A. Johnson ◦ Lynnette Gray
James MacAbee

July 8, 2013

Mr. Robert Hoverman
Mrs. Jill Hoverman
248 Kentucky Street
Franklin, IN 46131

RE: Zoning Violation and your correspondence of June 25th 2013

Dear Mr. & Mrs. Hoverman,

Please accept this letter as a response to your correspondence of June 25th, 2013 received by me at the Board of Public Works meeting on July 1st, 2013. I also am following up to the telephone call to my office on July 2, 2013. My purpose in writing is to advise you of your appeal rights regarding the Notice of Violation and to also correct certain information contained in your June 25th correspondence.

I, as legal counsel for the City of Franklin did not direct Mr. Underhill to issue the Notice of Violation although I agree entirely with his interpretation of the city ordinance and the facts set forth. In your correspondence you make reference to section 17.32.130 regarding site visibility standards. That is not the basis of the code violation. As you are aware, this matter was brought to the attention of the City as a result of a call to Mr. Underhill's office. After receiving the complaint, Mr. Underhill's staff personally inspected the property and determined that the rocks you placed as a boundary were located within the Right of Way. Your citation to the site visibility triangle is misplaced. It is Article 12.3 and Article 7.15 Part 1 (A) of the Zoning Ordinance that prohibits obstructions including rocks such as yours from being placed in the public right of way. The right-of-way is to be kept free of all obstructions.

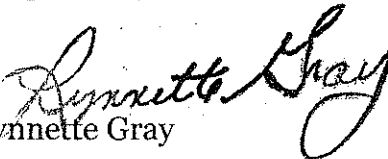
Article 7.15 (A) (2) entitled "Setbacks" provides "All fences, hedges, and walls may be permitted up to any property line. No fence, hedge, or wall may be placed in any right-of-way or required site visibility triangle." Section 13.2 of the Ordinance defines Fences as "Any structure, solid or otherwise, which is a barrier and is used as a boundary or means of protection, confinement, or concealment." It is clear that these rocks are placed in the right of way to create a boundary and barrier from the roadway. This creates an obstruction that is a risk to the public as evidenced by the accident that did in fact occur. As stated by Mr. Underhill, when there is a violation of the Ordinance that presents a public risk, the City may take immediate action. Article 12.3 provides that Immediate Public risk violations include, "Signs, structures, landscaping or other materials placed in a public right-of-way, easement or site visibility in violation of this Ordinance."

that a vehicle struck these rocks causing property damage that formed the basis of the complaint received by the city. Please accept this letter as formal notification that I, as legal counsel, agree with the interpretation of the City Engineer that the rocks you placed in the right of way violate city ordinance.

I understand that you disagree with this legal decision. If you choose to appeal the appropriate step would be to file a notice of administrative appeal with the Franklin Board of Zoning & Appeals. I am enclosing with this correspondence an application for administrative appeal. The next regularly scheduled meeting of the Franklin Board of Zoning & Appeals is August 7th, 2013. I am enclosing a calendar of meeting dates and deadlines. The deadline for filing the application for the August 7th, 2013 meeting is July 22, 2013.

As set forth in prior correspondence, the City intended to remove the obstruction by July 1st, 2013 if you did not do so voluntarily. The City has agreed to forgo that remedial action to permit you an opportunity to file your appeal application by July 22, 2013 requesting to be heard at the August 7, 2013 meeting. If you choose not to make an administrative appeal, the City will proceed accordingly after the July 22, 2013 application deadline expires. I am also enclosing the forms necessary to be filed to satisfy the public notice requirements. I.C.5-3-1-2 and IC 5-3-1-4 require that you publish notice of your administrative appeal and notify interested persons including surrounding property owners at least 10 days prior to the appeal hearing. This date would be July 27, 2013 and proof of that publication must be submitted to the City by August 2, 2013. You are certainly entitled to obtain legal counsel and if you are represented by an attorney, please provide them with this correspondence.

Respectively submitted,


Lynnette Gray

Cc: Travis Underhill
Mayor McGuinness
Joanna Myers
Richard Wertz

Justin M. Gifford
Attorney at Law
6902 Starkey Ridge Lane
Indianapolis, IN 46268

Lynette Gray
63 East Court Street
Post Office Box 160
Franklin, Indiana 46131

July 22, 2013

Re: Zoning Violation and Your Correspondence to my Client Dated July 8, 2013

Dear Ms. Gray:

I am writing on behalf of my client, Robert Hoverman, in response to your letter dated July 8, 2013 regarding a supposed zoning violation and appeals process. I have several issues I would like to briefly address.

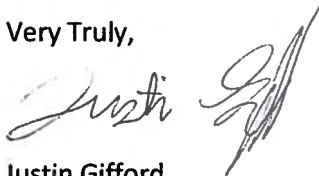
First: from my readings of the City of Franklin code, I see my client and I are equally as baffled by your and Mr. Underhill's interpretation of the code regarding fences and landscaping in the city's right of way. Generally, I disagree with your (and Mr. Underhill's) interpretation of the zoning code and view it as an attempt to address poorly drafted administrative language by informing a private citizen that he has misinterpreted the code and has very little chance of finding redress.

Second: with that in mind, I note that you have provided Mr. and Mrs. Hoverman with a Zoning Appeals Packet for the City of Franklin. Unfortunately, this packet is, to the best of my ability to interpret it, completely inadequate. While it would function well in the case that my client wished to build a storage shed in his back yard and required a variance from the standard zoning, it is not functional in terms of appealing a decision of violation by the City of Franklin's Engineer. Both my client and I are somewhat perturbed that the "fix" to the City's problem was to hand-scratch-out the language and forward it on to Mr. Hoverman with no "sign off" by you or any other city official regarding the modification of an official city document.

If Mr. Hoverman wishes to appeal the City of Franklin's zoning violation (which, I assure you, he does) I would be remiss if I did not request from you an official Administrative Appeal form to the Board of Zoning Appeals rather than what you have provided to him so that he can file his appeal on official City of Franklin forms.

Please feel free to contact me at Justin.m.gifford@gmail.com or 812-371-9189 if you require any clarifications.

Very Truly,



Justin Gifford
Attorney at Law

Cc: Travis Underhill, City Engineer
Joe McGuiness, Mayor
Richard Wertz, City Council



JOHNSON, GRAY & MACABEE
ATTORNEYS AT LAW

Russell A. Johnson ◦ Lynnette Gray
James MacAbee

July 29, 2013

Justin M. Gifford
Attorney At Law
6902 Starkey Ridge Lane
Indianapolis, IN 46268

Re: Zoning Violation
My Client: City of Franklin
Your Clients: Robert & Jill Hoverman

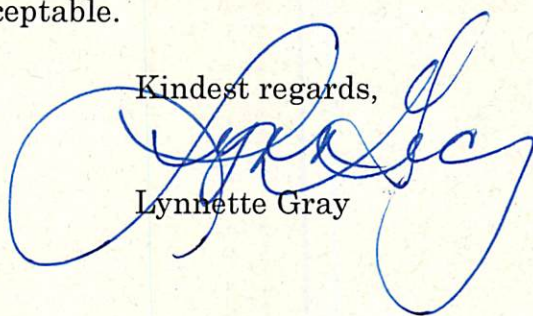
Dear Mr. Gifford:

Thank you for your correspondence of July 22nd, 2013. I was out of the office until July 29th, 2013 and write in response to the issues raised in your letter. I am glad that the Hoverman's have retained counsel to represent them in this matter. I continue to stand behind the information provided in my previous correspondence and agree with the City Engineer's interpretation of the right of way violation. I did want to write in response to your request for "official City of Franklin forms".

An administrative appeal of a decision by the Planning Director or Administrative Official is addressed in our zoning ordinance. The City does not have an "official Administrative Appeal form". The staff & I previously provided the documentation to Mr. Hoverman in an effort to assist him in addressing the requirements of the Ordinance. These requirements can be found in Section 11.5 of the Ordinance. As previously indicated, I.C. 5-3-1-2 and I.C. 5-3-1-4 require the Petitioner to publish notice of the administrative appeal and notify interested persons, including surrounding property owners, at least ten (10) days prior to the appeal hearing. Again, the previous forms were provided to assist and act as a guide but so long as the open door notice requirements, public notice requirements and the requirements of Section 11.5 of the Ordinance are met, no official form is necessary. As a professional courtesy, I am also enclosing a calendar of meeting dates and deadlines that must be met. If the administrative appeal is properly filed by the August 19th deadline in order to meet the September 4th, 2013 meeting date, we will forego any remedial action.

Mr. Underhill of the City of Franklin remains available to answer any procedural questions you have and you may certainly contact him directly in order to expedite the process. If the Open Door notification requirements are met and the Administrative Appeal Code provisions are satisfied, any format which you, as legal counsel, wish to present is acceptable.

Kindest regards,



Lynnette Gray

LG:vh

cc: Mayor Joe McGuinness
Travis Underhill

See Also:

*Board of Zoning Appeals
Rules & Procedures*

11.5 Administrative Appeal Applications

The Board may grant an appeal of any decision, interpretation, or determination made by the Planning Director, other Plan Commission staff members, or any other administrative official or board charged with the duty of enforcing and interpreting this Ordinance. The following procedure shall apply to all appeals of administrative decisions;

- A. **Application:** The applicant shall submit an administrative appeal application and required supporting information. Supporting information shall include, but not be limited to, the following:
 1. Original Submittals: Copies of all materials upon which the decision being appealed was based.
 2. Written Decisions: Copies of any written decisions that are the subject of the appeal.
 3. Appeal Basis: A letter describing the reasons for the appeal noting specific sections of this Ordinance or other standards applicable in the City of Franklin upon which the appeal is based.
- B. **Board Review and Action:** The BZA will then, at a meeting scheduled consistent with the adopted Calendar of Filing and Meeting Dates, review the administrative appeal application and supporting information.
 1. Representation: The applicant and any representative of the applicant must be present at the meeting to present the appeal.
 2. Testimony: The Board shall consider a report from the Planning Director and testimony from the applicant at the meeting.
 3. Procedures: The presentation of reports and testimony and all other aspects of the meeting shall be consistent with the Rules and Procedures of the Board.
 4. Possible Action: The BZA may grant, grant with modifications, deny, or continue the appeal.
 - a. *Granted:* The appeal shall be granted if findings of fact are made consistent with the requirements of Section 11.5(C) of this Ordinance and Indiana State Code.
 - b. *Granted with Modifications:* The appeal shall be granted with modifications if the Board of Zoning Appeals determines that the proper interpretation of the provision(s) that are subject to the appeal is consistent with neither the administrative decision nor the requested interpretation of the applicant.
 - c. *Denied:* The appeal shall be denied if findings of fact are made supporting the administrative decision.
 - d. *Continued:* The appeal shall be continued based on a request by the Planning Director or applicant; an indecisive vote; or a determination by the Board that additional information is required prior to action being taken on the request. The continuing of all applications shall be consistent with the adopted Rules and Procedures of the BZA.

Calendar of Meeting Dates

The City of Franklin Board of Zoning Appeals meets at 7:00 p.m. on the first Wednesday of each month in the Franklin City Hall, 70 E. Monroe Street, Franklin, Indiana 46131.

All petitions must be filed with the Planning Department by no later than the close of business on the appropriate date listed on the attached calendar. The office hours of the City of Franklin Planning Department are from 8 a.m. to 4 p.m., Monday through Friday.

Meeting Date	Application Deadline	Public Notice Deadline	Proof of Notice Deadline
January 2, 2013	December 17, 2012	December 22, 2012	December 31, 2012
February 6, 2013	January 18, 2013	January 26, 2013	February 1, 2013
March 6, 2013	February 15, 2013	February 23, 2013	March 1, 2013
April 3, 2013	March 18, 2013	March 23, 2013	March 29, 2013
May 1, 2013	April 15, 2013	April 20, 2013	April 26, 2013
June 5, 2013	May 20, 2013	May 25, 2013	May 31, 2013
July 3, 2013	June 17, 2013	June 22, 2013	June 28, 2013
August 7, 2013	July 22, 2013	July 27, 2013	August 2, 2013
September 4, 2013	August 19, 2013	August 24, 2013	August 30, 2013
October 2, 2013	September 16, 2013	September 21, 2013	September 27, 2013
November 6, 2013	October 21, 2013	October 26, 2013	November 1, 2013
December 4, 2013	November 18, 2013	November 23, 2013	November 29, 2013
January 8, 2014	December 23, 2013	December 28, 2013	January 3, 2014
February 5, 2014	January 17, 2014	January 25, 2014	January 31, 2014