



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: June 29, 2017

Re: Cases ZB 2017-12 (V) | Gordon Strain

REQUESTS:

Case ZB 2017-12 (V)...Gordon Strain

A request for consideration of two developmental standards variances from the City of Franklin Zoning Ordinance, Article 8, Chapter 3, to allow a wall sign with a total area of 630 sq. ft. and a projecting sign 15 sq. ft. in area. Proposal exceeds maximum area of a wall sign, and maximum total area of signage, in the MXD: Mixed-use Downtown Center zoning district, at the property located at 100 S. Jackson St.

PURPOSE OF STANDARD:

The "MXD," Mixed-Use: Downtown Center zoning district is intended to provide for the continued viability of the historic central business district. This district is also intended to accommodate and support the use of existing structures within the downtown. It is further intended to permit the continued, contextually appropriate development of the area through re-use and infill development.

CONSIDERATIONS:

Project Overview

1. Gordon Strain, Wolfe & Valentine, LLC, petitioner, is proposing to paint a mural on the Monroe Street (north) façade of the building located at 100 S. Jackson St. [See [Exhibit A: Mural Design & Dimensions](#)]
2. In 2014, the subject property underwent complete façade removal and replacement, including new front door, windows, and lighting, and all paint was removed from the Monroe Street (north) façade, exposing the original brick. The property was purchased by the petitioner in late 2016, who is now utilizing the space as Franklin Department of Public Art (no affiliation to City of Franklin Government).

Murals defined as Signage

3. According to the City of Franklin Zoning Ordinance, Article 13, Chapter 2, **Sign, Mural** is defined as: "A sign painted onto the side of a building, wall, ground, or structure."
4. According to the City of Franklin Zoning Ordinance, Article 13, Chapter 2, a **Sign** is defined as: "Any name, identification, description, device, display, or illustration which is affixed to, painted, or represented directly or indirectly upon a building, structure, or piece of land which directs attention to an object, product, place, activity, person, institution, organization, or business. A sign includes the face area which conveys a message, any equipment or sign device, and any related mechanical, electrical, and structural supports and features, such as poles and lighting. In no instance shall this Ordinance be interpreted as considering any flag as a sign"
5. According to the City of Franklin Zoning Ordinance, Article 13, Chapter 2, **Sign, Wall** is defined as: "A sign attached to or painted on the exterior wall of a structure."
6. Whereas the proposed mural would be painted directly onto the façade of the building, the proposal, therefore, qualifies as both a "mural" sign and a wall sign.

Sign Standards Variances

7. *Petitioners are requesting variances from the Sign Standards for the MXD: Mixed-use, Downtown Center zoning district, to be permitted a wall sign mural that would exceed the maximum area for a wall sign, and an additional 15 sq. ft. projecting sign, which together would exceed the total permitted sign area. [See [Exhibit A](#)]*
8. According to the City of Franklin Zoning Ordinance, Article 8, Sign Standards, “The intent of (the Sign Standards) is to further the goals of the Comprehensive Plan; avoid the proliferation of signage; encourage signs to be compatible with the scale of buildings and the surrounding features; maintain and enhance the aesthetic environment of the City; eliminate potential hazards to motorists and pedestrians resulting from signs; and promote the health, safety, and welfare of the residents of Franklin.”
9. According to Article 8, Chapter 1, the area of all signs is calculated by multiplying the maximum vertical dimension by the maximum horizontal dimension of the sign face (“content”) area.
10. According to the City of Franklin Zoning Ordinance, Article 8, Chapter 3, Sign Standards, properties in the MXD: Mixed-use, Downtown Center zoning district are permitted the following permanent signage:
 - a. Sign Size/Building Frontage Ratio: 1.5 sq. ft. of sign area per 1 linear foot of building frontage
 - b. Maximum Total Signage Allowed: 200 sq. ft. (if building frontage allows)
 - c. Maximum Number of Signs: 2
 - d. Permitted Sign Types: Wall, Awning, Projecting, Changeable Copy, Freestanding, Multi-tenant
 - e. Maximum Sign Size by type:
 - i. Wall: 100 sq. ft.;
 - ii. Projecting: 50 sq. ft.;
 - iii. Freestanding: 40 sq. ft.; 10 ft. maximum height;
 - iv. Changeable Copy: 32 sq. ft.;
 - v. Multi-Tenant Joint Sign: 20 sq. ft. per tenant, 10 ft. maximum height;
 - vi. Window Signs: Maximum coverage of 25% of total glass area.
11. The subject property has 45 feet of building frontage facing W. Monroe St.; therefore, a maximum of 67.5 sq. ft. of sign area is permitted. *Petitioner is proposing a mural (wall sign) 630 sq. ft. in size to be painted on the north façade and an additional 15 sq. ft. projecting sign, for a total of 645 sq. ft.*

Content Neutrality & SCOTUS Case: Reed v. Town of Gilbert

12. The City of Franklin adopted the current Sign Standards in 2013. Staff believes the ordinance to be content-neutral-based regulations of speech, regulating the use of signs by only the time, place, and manner of their placement. Signage allowances and types are uniformly regulated based on the Zoning District and width of building frontage, and not by use, user, or content.
13. “Content Neutral” means the City (staff, BZA, Plan Commission, etc.) cannot read, interpret, nor agree/disagree with a sign message to determine if it is permissible or not; instead, a sign is permissible if the size, type, and location of sign are in accordance with the limits established by the zoning district that the property falls within and the width of the building frontage.
14. “Content” of a sign can be in the form of text, pictures, illustrations, symbols, logos, or any combination thereof.
15. Any person, business, organization, or non-profit with signage area available to them has the right to display any message (“content”) they desire within the limits of the permitted sign area, type, and placement location.
16. On June 18, 2015, the Supreme Court of the United States (SCOTUS) decided the case of Reed v. Town of Gilbert, AZ. [See [Exhibit B: Reed v. Town of Gilbert](#)]

17. *Reed v. Town of Gilbert* instantly became a landmark case for local governments across the Country, as the SCOTUS held the Town of Gilbert's "Sign Code provisions are content-based regulations of speech that do not survive strict scrutiny."
18. Case Background: The Town of Gilbert Sign Code prohibited the display of outdoor signs without a permit, but exempted 23 categories of signs, including three particularly relevant to the SCOTUS decision: 1.) "Ideological Signs," defined as signs "communicating a message or ideas" that do not fit in any other Sign Code category, may be up to 20 sq. ft. and have no placement or time restrictions; 2.) "Political Signs," defined as signs "designed to influence the outcome of an election," may be up to 32 square feet and may only be displayed during an election season; and 3.) "Temporary Directional Signs," defined as signs directing the public to a church or other "qualifying event," have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the "qualifying event" and 1 hour after.
19. The SCOTUS held the Town of Gilbert's "Sign Code provisions are content-based regulations of speech that do not survive strict scrutiny," because:
 - a. "Content-based laws target speech based on its communicative content, they are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests."
 - b. "The Sign Code is content based on its face. It defines the categories of temporary, political, and ideological signs on the basis of their messages and then subjects each category to different restrictions. The restrictions applied thus depend entirely on the sign's communicative content. Because the Code, on its face, is a content-based regulation of speech, there is no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny."
 - c. "A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech."
 - d. "The Sign Code's content-based restrictions do not survive strict scrutiny because the Town has not demonstrated that the Code's differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end." "The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town when other types of signs create the same problem." "Nor has it shown that temporary directional signs pose a greater threat to public safety than ideological or political signs."
 - e. "This decision will not prevent governments from enacting effective sign laws. The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. And the Town may be able to forbid postings on public property, so long as it does so in an evenhanded, content-neutral manner." "An ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—e.g., warning signs marking hazards on private property or signs directing traffic—might also survive strict scrutiny."
20. The SCOTUS decision in *Reed v. Town of Gilbert, AZ* further emboldened City of Franklin staff to treat all sign content equally; in fact, staff has taken up the mantra that "we don't read signs," in an effort to ensure we are applying the codes uniformly, regardless of what message – in this case, a picture – is contained inside the maximum vertical and horizontal box of signage area proposed. We must review the proposed the same as if it were a giant mural for "Coca-Cola," "Jesus is King," or "Dogs > Cats."
21. City of Franklin staff has determined the mural proposed by the petitioner falls into the classification of a wall sign, with content painted onto the side of a building, on a building with 45 linear feet of frontage, in the MXD zoning district. The maximum vertical dimension of the proposed mural is 14' and the maximum horizontal dimension is 45', for a total of 630 sq. ft. The proposed projecting sign is three-sided with 6 sq. ft. on two sides and front is 3 sq. ft. for a total of 15 sq. ft.

22. The maximum wall sign size and maximum total sign area exceed permitted limits; staff's determination of the need to reduce the size of signs and/or seek development standard variances is based solely on the dimensions proposed. The content of the signage is irrelevant to staff's determination.

Comprehensive Plan

23. The 2013 Comprehensive Plan, Future Land Use Map, identifies this area as Downtown. "Future land use in the downtown area should support the function of the area as a unique focal point and gathering place for the Franklin community. Downtown Franklin should serve the City as a dynamic activity center that includes retailers, professional offices, residences, civic groups, government facilities, restaurants and bars, and service providers. Future land uses in the downtown should contribute to the establishment of an activity center with a mix of land uses which enhance the current community character that the downtown provides."
24. "The downtown should continue to feature strong relationships with both adjacent neighborhoods and with the community as a whole. For the adjacent historically significant core residential areas, the downtown functions as a location for daily social gatherings and casual evening strolls, a source of convenient neighborhood-based retail goods, and a point of connection to local civic and community organizations and City-wide transportation routes. For the City as a whole, the downtown also serves as a location for specialty shops, entertainment, civic gatherings, and access to local government."
25. "The character of the downtown, expressed through its historically significant architecture, should be maintained and enhanced as both a reminder of Franklin's rich past, and a symbol of its community identity and character. The downtown area and its surrounding core neighborhoods embody the traditional mixed-use, compact development characteristics that are encouraged in new construction in the community. Design features in the downtown should be consistent with the historically significant character and architecture present in the area. The downtown must remain a walkable area, with new construction being consistent in scale and setback to the area's current character. Design features should be human scale and include window displays, awnings, street furniture, buildings built to the sidewalk, decorative street lights, and pedestrian-oriented business signs."

Zoning Ordinance

26. 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.
27. 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.

Surrounding Zoning:

North: MXD: Mixed-use, Downton Center
South: MXD: Mixed-use, Downton Center
East: MXD: Mixed-use, Downton Center
West: MXD: Mixed-use, Downton Center

Surrounding Land Use:

North: Parking Lot
South: Single-family residential
East: Ann's Restaurant
West: Generations Body Shop

CRITERIA FOR DECISIONS – DEVELOPMENT STANDARDS VARIANCE:

(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 36-7-4-918.5) 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 approval of the proposed mural could be injurious to the general welfare of the community, if the Board is unable to clearly distinguish the proposal from other signage throughout the City of Franklin. Approval, without narrowly tailoring it to a specific compelling state interest, could unintentionally invalidate the City's Sign Standards. Approval or denial cannot be derived by a preference or aversion to the petitioner or proposed content of the signage.

Petitioner has proposed what most people would very quickly call "art" due to the: 1. Media chosen (hand-painted), 2. Location and size, 3. Petitioner's intended purpose for the mural, and 4. Lack of any text or clear message depicted in the mural. However, if a company name/logo was including in the same painted mural, most people would quickly say that was now a commercial sign (commercial speech). Moreover, if the same painted mural contained religious symbols or a likeness of a sitting politician (e.g. President Trump, instead of a woman reading a book), people may no longer agree on whether it was clearly "art," and if the mural should then be held to a different set of regulations, such as size, or if the Board should approve it at all. These changes demonstrate a bias toward content, which the government is not allowed to regulate, per the First & Fourteenth Amendments to the U.S. Constitution, and more narrowly held by the Supreme Court of the United States' decision in the case of *Reed v. Town of Gilbert, AZ*.

The challenge for local governments across the nation, is that it is impermissible for them to distinguish between artistic murals containing commercial speech and those containing noncommercial speech. Local governments are instead left with only the tools to regulate the time (when: time related to an event), place (where: zoning district, setback, etc.), and manner (how: sign type, media/material chosen, size, height, lighting, etc.) of all signs, regardless of commercial or noncommercial speech.

Staff's recommendation to the Board, is to consider the proposed mural as a box, 630 sq. ft. in size, without any attention given to what is proposed inside the boxes, and instead focus on the surface area requested. The Board should analyze the proposal based on only the "when," "where," and "how" (time, place, and manner).

Staff finds that approval of the proposed variances might not be injurious to the public health, safety, morals, and general welfare, as the proposed mural would be hand-painted directly on the wall surface at 100 S. Jackson St. Furthermore, the proposed location of the mural is situated uniquely in the Downtown, across Monroe Street from a public parking lot that also serves as the local Farmer's Market each summer. The parking lot is also the only property, besides Monroe Street, that separates the subject property from Jefferson Street, the main arterial through Downtown Franklin. In recent years, properties along Monroe Street, between Jackson St. and Water St., have become increasingly attractive for small businesses to locate, and increasingly popular for residents to frequent. The proposal for a mural on the proposed façade, could provide a unique opportunity in Downtown Franklin, to create a new focal point and attraction to draw more visitors from Jefferson St., down Jackson St. and to the businesses along Monroe St. In the 2013 Comprehensive Plan, the downtown area, including the subject property, is defined as a unique focal point and gathering place for the Franklin Community. With the Comprehensive Plan being the City's baseline measurement of planned "general welfare" goals, and the characteristics specifically outlined for the Downtown in the Land Use Definitions, staff finds that a hand-painted mural, a petitioner-stated work of "public art," at the subject property and in the manner proposed, could contribute to the advancement of the Downtown as a unique activity center and could enhance the current community character already present Downtown.

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If the Board finds evidence to approve the variance request, they would be wise to include conditions that require content to be hand-painted directly onto the façade, and impose a lengthy minimum period of time, such as one or two years, that an applied content must remain unchanged, except for complete or partial removal, or repair of damaged or faded paint. Staff finds the suggested conditions relating to time and manner are necessary to ensure the intent of the sign standards is followed.

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 that approval of the proposed variance could have a substantially adverse effect on adjacent properties, as approval would be for the total area allowed to be painted for a mural; Board approval would not be –and cannot be– an expressed approval of any proposed content, now or in the future. If approved, the variances would run with the property and would subsequently allow any future content the current, or future property owner, desired to paint on the same area.

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 a practical difficulty in the use of the property for a hand-painted mural. The Zoning Ordinance allows for painted wall signs in the Sign Standards; however, the limits of sign area available effectively eliminate the possibility of a mural. Murals, regardless of content, typically encompass entire façades of buildings and not just small swaths. The strict application of the ordinance would result in the petitioner having to completely change and reduce the proposed mural, or cancel it altogether.