

**MINUTES OF THE MEETING OF THE
FRANKLIN BOARD OF ZONING APPEALS
NOVEMBER 6, 2014**

The Franklin Board of Zoning Appeals held a regular meeting on Thursday, November 6, 2014 at 6:00 p.m. in the **City Hall Boardroom**.

Members present: Greg Caesar
 Dave Rittenberry
 Gillian Fischbach
 Frank Jones

Staff present: Donald Anthony, Planning & Sustainability
 Susan Coleman, Planning & Sustainability
 Kristen Corn, Law Department
 Lori Jarosz, BNS Department
 Molly Pike, BNS Department

The agenda read as follows:

Minutes, September 4, 2014

A **Variance Request** by Mike and Mel Payne to allow an accessory structure to exceed the height of the primary structure by three (3) feet for the property located at 418 Boyd Mill Avenue.

A **Variance Request** by Marco Peters representing the Franklin Family YMCA to allow a parking lot between an existing parking lot and Royal Oaks Court for the property located at 501 South Royal Oaks Boulevard.

A **Variance Request** by Marco Peters representing the Franklin Family YMCA to vary the requirement for a connection to the public sidewalk system for the property located at 501 South Royal Oaks Boulevard.

A **Variance Request** by David and Kilynn Schueler to vary the rear yard setback by five (5) feet for the property located at 103 Abercairn Drive in the Sullivan Farms PUD Subdivision to allow for the addition of a covered porch.

A **Variance Request** by Mark Sullivan to vary the rear yard setback by ten (10) feet for the property located at 512 Rafe Court in the Chestnut Bend Subdivision to allow for the addition of a covered porch.

A **Variance Request** by Amy Bagwell to vary the rear yard setback by six (6) feet for the property located at 121 Bromley Park Lane in the Fieldstone Farms PUD Subdivision to allow for the addition of a covered porch.

Chair Jones called the meeting to order at 6:05 pm.

Chair Jones requested to know if there were any non-agenda items.

Staff stated there were no non-agenda items to be heard.

Mr. Anthony requested to make a few comments and stated the following:

- Copies of the 2015 submittal and meeting calendar have been distributed. We will set the January meeting date at the December meeting.
- We have also distributed a document showing various ways to obtain four hours of training, which as you know is required by state law. If you would like to attend the infill tour on November 18th, please let Susan know by next Monday afternoon.
- An announcement for all of our appellants: After your case is heard, please come to the table to sign your acknowledgement of the Board's action on your case. Please do not leave without signing the acknowledgement first.

Minutes, September 4, 2014

Mr. Caesar moved to approve the minutes from September 4, 2014 as submitted. Ms. Fischbach seconded the motion and the motion passed unanimously.

1. A Variance Request by Mike and Mel Payne to allow an accessory structure to exceed the height of the primary structure by three (3) feet for the property located at 418 Boyd Mill Avenue.

Mr. Anthony stated the appellant wishes to construct a two-story accessory structure behind a one-story house at 418 Boyd Mill Avenue. Mr. Anthony stated the relevant portion of the Zoning Ordinance is Section 4.1.2, which requires that an accessory structure be subordinate to and not exceed the height of its associated principal structure. Mr. Anthony stated staff has evaluated the appellant's variance request along with supporting documentation and has determined that this request fails to meet two of the three thresholds required for granting a variance. Mr. Anthony stated with regard to the first threshold, staff notes that the subject property is not exceptionally narrow, exceptionally shallow, unusually shaped, or topographically unique and thus, the subject property does not satisfy the extraordinary or exceptional situation requirement. Mr. Anthony stated with regard to hardship or practical difficulty, the appellant contends that siting and heights of neighboring houses in Vandalia Cottages create an awkward visual disconnect between the subject property and the Vandalia property. Mr. Anthony stated staff acknowledges the height differences between the appellant's house and the neighboring houses as well as the closeness of the Vandalia houses to the appellant's property line and it is up to the Board to decide whether the siting and heights of the neighboring houses constitute a hardship for the appellant. Mr. Anthony stated finally, staff is concerned that granting this variance would impair the intent and purpose of the Zoning Ordinance and the City has strictly enforced accessory structure requirements largely as a means of preserving neighborhood character and quality, which is one of the primary goals of the Zoning Ordinance. Mr. Anthony stated granting this variance may set a precedent for future

projects and have significant impacts on neighborhood character and quality. Mr. Anthony stated staff recommends disapproval of this variance request.

Ms. Payne addressed each point and stated the main issue was privacy. Ms. Payne stated when they bought the cottages were not behind them and they did not know anything about the cottages. Ms. Payne stated there are 9 other homes around them that have similar building structures and this would add to the character of the neighborhood.

Mr. Switzer stated there are two-story homes five foot off Payne's property line.

Ms. Payne stated they went to Historic DRC and Ms. Pearce stated they did have an exceptional circumstance.

Mr. Switzer stated in terms of the precedent the structure will be fifty feet off the house and will not be seen that much.

Chair Jones requested to know if there were any public citizens who wished to speak.

Mr. Jim Parish at 416 Boyd Mill, next door neighbor, spoke in favor of this request.

Mr. Matt Yezerski at 422 Boyd Mill, spoke in favor of granting the request.

Chair Jones closed the public portion of comments.

Ms. Fischbach requested to know if other carriage houses existed on the street with the carriage house is taller than the existing home.

Mr. Anthony stated not to staff's knowledge.

Ms. Payne stated there was one at 444 Boyd Mill.

Mr. Caesar questioned staff on how the cottage lane piece of property is zoned.

Mr. Anthony explained it is zoned SDR, a new zoning category and explained you have more flexible standards with this zoning.

Chair Jones stated he was almost sure this property 418 Boyd Mill is a lot of record.

Mr. Anthony stated it has recently been re-platted so it is a platted lot now.

Ms. Fischbach stated the second standard has an argument, but she is having a hard time getting past the first standard and the third.

Mr. Caesar stated he can't past standard three and has a concern this would set a precedent.

Mr. Caesar moved to disapprove the variance request due to it not meeting the third standard to grant a variance request that states it would impair the intent of the Zoning Ordinance. Ms. Fischbach seconded the motion and the motion passed with three voting in favor. .

2. A Variance Request by Marco Peters representing the Franklin Family YMCA to allow a parking lot between an existing parking lot and Royal Oaks Court for the property located at 501 South Royal Oaks Boulevard.

Mr. Anthony stated the appellant wishes to construct a parking lot between an existing parking lot and Royal Oaks Court. Mr. Anthony stated the relevant portion of the Zoning Ordinance is Section 5.3.6, which requires that a parking lot between the building and street having more than 100 spaces not exceed 180 feet in width and Section 5.9.4 of the Zoning Ordinance reiterates this requirement. Mr. Anthony stated the appellant wishes to construct a parking lot of 180 feet in width between the YMCA building and South Royal Oaks Court. Mr. Anthony stated when the proposed lot is combined with an existing parking lot that already sits between the building and the street, the appellant would have a parking lot of approximately 235 spaces and 330 feet in width. Mr. Anthony stated Staff's evaluation of the variance request and supporting documentation indicates that an exceptional situation exists on the subject property and the property's conic configuration makes it uniquely and irregularly shaped. Further, the property has significant topography issues. Mr. Anthony stated for these reasons, staff finds that the first threshold has been met. Mr. Anthony stated with regard to hardship or practical difficulty, the applicant has shown that the potential for finding an alternative location for the parking area is limited and the northern portion of the property appears to be the most viable location for an expanded parking area. Mr. Anthony stated the Board must decide whether such constraints constitute a hardship or practical difficulty. Mr. Anthony stated finally, staff has determined that the broad distance between the parking area and Mack Hatcher Parkway would not impair the Zoning Ordinance's emphasis on minimizing the visual impact of large parking lots from major thoroughfares. Further, staff can find no evidence to suggest that granting this variance would be a detriment to the public good. Mr. Anthony stated if the Board finds that the hardship or practical difficulty threshold has been satisfied, then staff recommends approval of this variance request.

Mr. Matt Foster spoke on behalf of the request and stated they felt staff had addressed everything.

Mr. Caesar requested to know if there was any opposition or support for the request from the audience and no one requested to speak.

Ms. Fischbach moved to approve the variance request to allow a 150-foot parking lot expansion (as measured from the northern edge of the existing parking lot) between the existing parking lot and Royal Oaks Court for the property located at 501 South Royal Oaks Boulevard because: 1) the lot is unique when compared to other lots in the surrounding area and possesses conditions containing strictly to the property, 2) a practical difficulty to the property owner would result because of the unique lot shape, and 3) the request can be granted without impairing the intent and purpose of the Franklin Zoning Ordinance because the lot is unique and substantial detriment to

the public good would not result. Mr. Rittenberry seconded the motion and the motion passed unanimously.

3. A Variance Request by Marco Peters representing the Franklin Family YMCA to vary the requirement for a connection to the public sidewalk system for the property located at 501 South Royal Oaks Boulevard.

Mr. Anthony stated the appellant wishes to vary the requirement to connect to the public sidewalk system at 501 South Royal Oaks Boulevard. Mr. Anthony stated the relevant portion of the Zoning Ordinance is Section 5.10.6, which requires that an internal pedestrian walkway with a minimum width of five feet connect to the public sidewalk system. Mr. Anthony stated in this case, the appellant contends that topography makes it impractical to construct a connection to the public sidewalk on South Royal Oaks Court. Mr. Anthony stated Staff's review of the appellant's request and supporting documentation indicates that significant topography issues do exist on the subject property and the existing structure is situated well above street grade. Mr. Anthony stated due to the change in topography, staff finds that the first threshold for granting a variance has been met. Mr. Anthony stated with regard to hardship or practical difficulty, the appellant's case largely revolves around the ADA and related accessibility issues. Mr. Anthony explained ADA and City accessibility issues are not within the purview of the Zoning Ordinance or this Board. Mr. Anthony stated, Planning staff cannot comment on those issues. Mr. Anthony stated the Board's evaluation of zoning-related issues and evidence should guide the Board's decision on whether the appellant faces a hardship or practical difficulty. Mr. Anthony stated finally, staff has concerns about how granting a variance for this request may impair the intent and purpose of the Zoning Ordinance and as noted in the staff report, the City has occasionally waived sidewalk requirements when sidewalks would not have served the immediate public interest. Mr. Anthony stated Staff does not find this to be the case for this particular project. Mr. Anthony stated staff would like to work with the applicant during site plan review to find a suitable alternative to having no sidewalk connection.

Mr. Foster stated this property has grown a lot since 1995 and the most natural path for a sidewalk would be through the new parking area and run down the hill, he showed exhibit boards. Mr. Foster stated with the facility located up on a hill there is a 26-foot elevation change from the front door to the street grade. Mr. Foster showed the existing parking area. Mr. Foster stated with the Zoning Ordinance they find themselves in a "catch 22" Mr. Foster explained the grade is so steep it is almost impossible. Mr. Foster stated ADA does not require a sidewalk, but the Zoning Ordinance does and it must comply with ADA standards. Mr. Foster showed more exhibits with front of building and parking. Mr. Foster explained all the grading, retaining walls that would be needed with varying heights. Mr. Foster stated there is no connection to anything for a sidewalk.

Ms. Fischbach questioned staff on an alternative at site plan stage.

Mr. Anthony stated he was not at liberty to discuss the site plan yet.

Mr. Caesar moved to close public hearing and the motions passed.

Ms. Fischbach moved to approve the variance request to vary the requirement for a connection to the public sidewalk system for the property located at 501 South Royal Oaks Boulevard because

the standards for granting a variance have been satisfied. Mr. Rittenberry seconded the motion and the motion passed with Mr. Caesar voting no.

4. A Variance Request by David and Kilynn Schueler to vary the rear yard setback by five (5) feet for the property located at 103 Abercairn Drive in the Sullivan Farms PUD Subdivision to allow for the addition of a covered porch.

Mr. Anthony stated in this case, the appellant wishes to reduce the side yard setback from 25 feet to 20 feet in order to construct a covered porch at 103 Abercairn Drive. Mr. Anthony stated Staff has reviewed the appellant's request and has determined that an extraordinary situation exists on the subject lot and Mr. Anthony explained the lot is located near the end of a cul-de-sac and, as shown in the appellant's exhibits, has a unique shape and building envelope. Mr. Anthony stated following previous findings in similar cases, staff has determined that the first threshold for granting a variance has been met. Mr. Anthony stated with regard to hardship or practical difficulty, aerial photography and information provided by the appellant indicate limited options for alternative placement of the covered porch and besides the location proposed by the appellant, the other possible location for a covered porch is on the southeastern corner of the house. Mr. Anthony stated placing the porch in that location would be inconsistent with the design of the house and the context of the neighborhood, so the Board must decide whether these limitations constitute a hardship or practical difficulty. Mr. Anthony stated Staff has determined that granting a variance for the covered porch would not interfere with surrounding properties' access to light or air or otherwise encumber them and therefore, staff finds that there would be no public detriment and that the intent and purpose of the Zoning Ordinance would not be impaired by the granting of this variance. Mr. Anthony stated if the Board finds that the hardship or practical difficulty threshold has been satisfied, then staff recommends approval of this variance request.

Mr. Peedler stated there would only be one corner hanging five feet over.

Mr. Caesar moved to close public hearing with Ms. Fischbach seconded and the motion passed.

Mr. Rittenberry moved to approve the variance request to vary the required twenty-five (25) foot rear-yard setback by five (5) feet to twenty (20) feet because: 1) the lot is unique when compared to other lots in the surrounding area and possesses conditions containing strictly to the property, 2) a practical difficulty to the property owner would result because of the unique lot shape, and 3) the request can be granted without impairing the intent and purpose of the Franklin Zoning Ordinance because the lot is unique and substantial detriment to the public good would not result. Mr. Caesar seconded the motion and the motion passed.

5. A Variance Request by Mark Sullivan to vary the rear yard setback by ten (10) feet for the property located at 512 Rafe Court in the Chestnut Bend Subdivision to allow for the addition of a covered porch.

Mr. Anthony stated the appellant wishes to reduce the rear yard setback from 40 feet to 30 feet in order to construct a covered porch at 512 Rafe Court. Mr. Anthony state Staff’s review of the subject property indicates two outstanding issues related to the property. First, the subject lot sits near the end of a cul-de-sac, giving the property a unique shape and the subject lot has a 40 foot rear setback, which in itself is rare for PUD subdivisions in Franklin. Based on these two findings, staff has determined that an extraordinary or exceptional situation exists on this lot. Mr. Anthony stated with regard to hardship or practical difficulty, the recorded plat and aerial photography indicate that the subject lot is awkwardly shaped, leaving the rear of the property as the most obvious location for a covered porch and ultimately, the Board must decide whether the inability to build a covered porch within the recorded setbacks constitutes a hardship or practical difficulty. Mr. Anthony stated finally, staff finds that the broad, 30-foot rear setback that would remain even with the variance being granted would not prevent surrounding properties from accessing light and air and therefore, staff finds that the third threshold for granting a variance has been satisfied. Mr. Anthony stated if the Board finds that the hardship or practical difficulty threshold has been satisfied, then staff recommends approval of this variance request.

Mr. Sullivan introduced himself and thanked the board for their consideration and explained several other houses have done this and they would like to do so as well.

Public hearing was closed.

Ms. Fischbach moved to approve the variance request to vary the required forty (40) foot rear-yard setback by ten (10) feet to thirty (30) feet because: 1) the lot is unique when compared to other lots in the surrounding area and possesses conditions containing strictly to the property, 2) a practical difficulty to the property owner would result because of the unique lot shape, and 3) the request can be granted without impairing the intent and purpose of the Franklin Zoning Ordinance because the lot is unique and substantial detriment to the public good would not result. Mr. Caesar seconded the motion and the motion passed.

6. A Variance Request by Amy Bagwell to vary the rear yard setback by six (6) feet for the property located at 121 Bromley Park Lane in the Fieldstone Farms PUD Subdivision to allow for the addition of a covered porch.

Mr. Anthony stated the appellant wishes to construct a covered porch at 121 Bromley Park Lane. The proposed porch would be partially situated within the rear setback, reducing the rear setback from 25 feet to 19 feet. Mr. Anthony stated with regard to the first threshold, staff finds that an extraordinary or exceptional situation exists on the subject property and the appellant’s lot is a double-frontage lot and has a 20-foot strip of open space directly abutting the appellant’s rear yard. Mr. Anthony stated these factors certainly make the subject lot unique and therefore, staff has determined that the first threshold for granting a variance has been satisfied. Mr. Anthony stated with regard to hardship or practical difficulty, staff’s review of the recorded plat and aerial photography indicates that the appellant’s house leaves very little space on the subject lot for the addition of a covered porch and the rear yard would appear to be the only viable option for such an addition. Mr. Anthony stated ultimately, it is up to the Board to decide whether the inability to construct a covered porch within the recorded setbacks constitutes a hardship or practical

difficulty. Mr. Anthony stated staff finds that granting the variance would not encumber surrounding properties or inhibit their access to light and air and granting the variance would not impair the intent and purpose of the Zoning Ordinance. Mr. Anthony stated if the Board finds that the hardship or practical difficulty threshold has been satisfied, then staff recommends approval of this variance request.

Ms. Bagwell stated staff had covered everything.

Mr. Anthony passed around additional pictures.

Mr. Scott Black at 117 Bromwell spoke in favor of the request.

Public portion was closed.

Mr. Caesar moved to approve the variance request to vary the required twenty-five (25) foot rear-yard setback by six (6) feet to nineteen (19) feet because: 1) the lot is unique when compared to other lots in the surrounding area and possesses conditions containing strictly to the property, 2) a practical difficulty to the property owner would result because of the unique lot shape, and 3) the request can be granted without impairing the intent and purpose of the Franklin Zoning Ordinance because the lot is unique and substantial detriment to the public good would not result. Ms. Fischbach seconded the motion and the motion passed.

Other Business.

Mr. Anthony stated he passed out the new meeting schedule for 2015 and also passed out a schedule to acquire the required board member training. Mr. Anthony requested they let Ms. Coleman know which they choose.

Adjourn.

With there being no further business Ms. Fischbach moved to adjourn the meeting at 7:15 pm. Mr. Rittenberry seconded the motion and the motion carried unanimously.

Chair