

**MINUTES OF THE MEETING OF THE
FRANKLIN BOARD OF ZONING APPEALS
APRIL 2, 2015**

The Franklin Board of Zoning Appeals held a regular meeting on Thursday, April 2, 2015 at 6:00 p.m. in the **City Hall Boardroom**.

Members present: Greg Caesar
 Gillian Fischbach
 Frank Jones

Staff present: Donald Anthony, Planning & Sustainability
 Kristen Corn, Law Department

The agenda read as follows:

Minutes, January 8, 2015

A Variance Request by Bob Crosby to allow a swimming pool to be located within the front yard of a proposed lot for the property located at 209 Lewisburg Avenue.

A Variance Request by Mark Sullivan to correct a previously granted rear yard setback variance 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 Greg Gamble to allow an outdoor storage lot without covering or enclosure for the property located at 4621 Carothers Parkway.

Chair Jones called the meeting to order at 6:00 pm and requested to know if there were any non-agenda items.

Mr. Anthony stated there were no non-agenda items.

Minutes, January 8, 2015

Ms. Fischbach moved to approve the January 8, 2015 minutes. Mr. Caesar seconded the motion and the motion passed.

1. A Variance Request by Bob Crosby to allow a swimming pool to be located within the front yard of a proposed lot for the property located at 209 Lewisburg Avenue.

Mr. Anthony stated the appellant requests that a swimming pool be allowed to be located within the front yard of a proposed lot for the property at 209 Lewisburg Avenue. Mr. Anthony explained the pool currently sits in the rear yard, behind the principle structure and in front of another structure. Mr. Anthony stated the applicant would like to go before the Franklin Municipal Planning Commission (FMPC) to propose a subdivision of this property, but the

proposed subdivision would place the pool in the front yard of one of the lots. Therefore, before the applicant can present a subdivision to FMPC, they must get a variance determination from BOZA. Mr. Anthony stated in order for the Board to grant a variance, three standards must be established and include the following:

1. There must be an extraordinary or exceptional situation or condition pertaining strictly to the property considered (generally due to narrowness, shallowness, unusual shape or some exceptional topographic condition);
2. Strict application of the Ordinance would result in practical difficulties to, or undue hardship upon, the owner of the property; and
3. The relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zoning Ordinance.

Mr. Anthony stated the first standard to be considered is whether there is an extraordinary or exceptional situation pertaining to the subject property. Mr. Anthony stated the subject property is a regularly shaped lot, and is approximately 85 feet by 475 feet. Mr. Anthony stated there are no extraordinary topography changes on the lot, nor are there any other exceptional physical constraints to the lot and therefore, staff finds that there is no extraordinary or exceptional situation pertaining strictly to the subject property, and that this request does not meet the first threshold for granting a variance. Mr. Anthony stated the second standard to be considered is that of hardship or practical difficulty. Mr. Anthony stated the Board must determine whether the location of the existing structures on the subject property is a hardship or practical difficulty. Mr. Anthony stated Staff reviewed the proposed subdivision for the property as well as GIS and aerial data for the property and there are several ways to subdivide this lot to meet the Subdivision Regulations, all of which would require some level of demolition of existing site structures. Mr. Anthony stated however, it is not uncommon for a property owner to first tear down an existing structure before a subdivision of a lot can be recorded. Mr. Anthony stated this property does lie within the Historic Preservation Overlay, so any demolition would first have to be approved by the Historic Zoning Commission. Ultimately, the Board must decide whether the location of the existing structures constitutes a hardship or practical difficulty. Mr. Anthony stated the final standard the Board must consider is whether the requested relief would be a detriment to the public good or impair the intent and purpose of the Zoning Ordinance. Mr. Anthony stated the intent of prohibiting accessory structures within the front or side yards is to enforce their presence as subordinate and incidental to the principle structure. Mr. Anthony stated in this case, allowing the swimming pool to remain in front of what would become the principle structure would blur the lines of what is considered the principle structure on the lot, and create a situation that is out of context with the surrounding established neighborhood. Mr. Anthony stated therefore, staff finds that granting this variance would impair the intent and purpose of the Zoning Ordinance and that the third threshold is not satisfied. Mr. Anthony stated in order for the Board to vary the requirement for a swimming pool to be located within the rear yard of the property located at 209 Lewisburg Avenue, the Board must find that all three standards for granting a variance have been satisfied.

Mr. Echols stated he was representing this item for Mr. Crosby. Mr. Echols explained the properties Mr. Crosby owns related with this property. Mr. Echols stated this is a matter of estate planning and there is absolutely no physical difference being sought here with the exception of the driveway that will access the rear site. Mr. Echols stated this is a very narrow, long site. Mr. Echols stated this is a very challenging site from length and narrowness of the site. Mr. Echols stated secondly the notion in order to achieve this demolition should be pursued is not seen as

either efficient or wise in the current situation. Mr. Echols stated they are trying to create situation where there could be different ownership on these lots. Mr. Echols stated with respect to the third condition, he understands the rationale for keeping accessory structures out of front lots that is not the case here, the swimming pool will not be visible from the street and will not cause any harm to the public.

Mr. Crosby stated he has owned this property since 1983 and bought the dome house in 1999 and built the pool around 2005. Mr. Crosby stated he wants to have a place for his grandchild and has no intent to sell the property. Mr. Crosby stated he built the pool for his family and wants to keep this atmosphere for Camp Crosby.

Chair Jones requested to know if there was anyone who wished to speak for or against this item.

Ms. Isabell Haddock, from 5169 Thick Road, stated her concern was not for what was being proposed right now, but does not want this to be the start of going down a slippery slope to where the property could become for commercial development or bed and breakfast use. Ms. Haddock requested a copy of the minutes.

Mr. Caesar stated he received an email today from Mr. Alan Sims against this item.

Chair Jones closed the public portion.

Mr. Caesar requested from staff clarification on whether the pool is the primary structure on the lot.

Mr. Anthony stated the pool is not the primary structure.

Ms. Fischbach requested to know if staff had any comments on the bed and breakfast issue.

Mr. Anthony stated in the zoning it would be, but with a lot restrictions and requirements.

Chair Jones requested to know if there had been any neighbor correspondence for or against this item.

Mr. Anthony stated no he did not.

Mr. Caesar stated if this variance happened which lot would it go with.

Mr. Anthony stated it would go with the new rear lot.

Ms. Fischbach stated if the subdivision had a new property line between the pool and the guest house would that make a difference.

Mr. Anthony stated yes the pool would be an accessory structure to the front with whatever setbacks standards that applied.

Mr. Echols stated a variance would be needed for the setbacks.

Ms. Fischbach requested to know from applicant how this would not be impairing the zoning ordinance.

Mr. Echols stated he feels the public does not want sheds, etc. in front of houses and he understands that can be seen from the street, but with this property the accessory structure will not be visible from the street.

Ms. Fischbach requested for staff to explain from their perspective if it was just visual of the lines.

Mr. Anthony stated they are largely aesthetic, but staff has to look at future down the road.

Chair Jones stated this was an accessory road, not a street.

Ms. Fischbach stated she is a little concerned about setting a precedent, but will move to approve due to the property being narrow, strict application would result in practical difficulties to the owner, can be granted without substantial detriment to the public good and agrees with the existing structure in the front and with this property being quite a bit off of Lewisburg Pike it could be done without substantially impairing the Zoning Ordinance. Mr. Caesar seconded the motion and after discussion of setting a precedence the motion passed 3-0.

2. A Variance Request by Mark Sullivan to correct a previously granted rear yard setback variance 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 requests a ten (10) foot variance from the rear yard setback for the property located at 512 Rafe Court in the Chestnut Bend Subdivision to construct a covered porch. Mr. Anthony stated the recorded plat for this subdivision requires this lot to maintain a minimum rear yard setback of forty (40) feet. Mr. Anthony stated to summarize an excerpt from the *Zoning Ordinance*, which is noted in an earlier section of this staff report, in order for the Board to grant a variance, three standards must be established and include the following:

1. There must be an extraordinary or exceptional situation or condition pertaining strictly to the property considered (generally due to narrowness, shallowness, unusual shape or some exceptional topographic condition);
2. Strict application of the Ordinance would result in practical difficulties to, or undue hardship upon, the owner of the property; and
3. The relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zoning Ordinance.

Mr. Anthony stated the first standard to be considered is whether there is an extraordinary or exceptional situation pertaining to the subject property. Mr. Anthony stated the subject property is located near the end of a cul-de-sac, which gives the entire lot a unique shape and creates an unusual building envelope. Further, a forty (40) foot rear setback is in itself exceptional in Franklin; most of the newer subdivisions in the City have shallower rear setbacks. Mr. Anthony stated in other hearings for similar rear yard setback variance requests, the Board has found that a lot along a cul-de-sac meets the first standard and based on the subject property's unique shape

and the Board's previous actions in similar cases, staff finds that there is extraordinary or exceptional situation pertaining strictly to the subject property, thereby meeting the first threshold for granting a variance. Mr. Anthony stated the second standard to be considered is that of hardship or practical difficulty. Mr. Anthony stated the Board must determine whether the inability to construct a screen porch on the subject property is a hardship or practical difficulty. Mr. Anthony stated Staff reviewed the recorded plat for the property as well as GIS and aerial data for the property. The subject property is awkwardly-shaped—particularly on the front (west) side—due to the width of the cul-de-sac. Mr. Anthony stated this results in the subject house appearing to sit farther back from the street than neighboring houses and further, the appellant is constrained on both side facades of the house. Mr. Anthony stated the driveway and garage are located on the house's southern side, while the northern façade of the house sits only 18 feet from the side property line. Mr. Anthony stated the rear of the house appears to be the most viable option for locating a covered porch and ultimately, the Board must decide whether the inability to construct a covered porch within the required forty (40) foot rear setback constitutes a hardship or practical difficulty. Mr. Anthony stated the final standard the Board must consider is whether the requested relief would be a detriment to the public good or impair the intent and purpose of the Zoning Ordinance. Mr. Anthony stated the intent of rear yard setbacks is to ensure that surrounding properties have access to light, air, and be free from off-site encumbrances and in this case, thirty (30) feet of the rear yard will remain unencumbered with the proposed screen porch addition. Granting this variance should not greatly impact any adjacent structure's access to light and air. Therefore, staff finds that granting this variance would not impair the intent and purpose of the Zoning Ordinance and that the third threshold is satisfied. Mr. Anthony stated if the Board finds that the second threshold is satisfied, then all three standards for the variance will be met, and staff recommends approval of the ten (10) foot rear yard setback variance requested by the appellant.

Mr. Sullivan stated they wanted to build a 20 by 20 covered deck due to his daughter getting married this Spring and the want a place to have some nice festivities.

Chair Jones requested to know if anyone wished to speak for or against this item and no one requested to speak.

Mr. Caesar moved to approve the variance request to vary the required forty (40) foot rear-yard setback by fifteen (15) feet to twenty-five (25) 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 3-0.

3. A Variance Request by Greg Gamble to allow an outdoor storage lot without covering or enclosure for the property located at 4621 Carothers Parkway.

Mr. Anthony stated the appellant requests a variance to store approximately 250 cars on an uncovered, unenclosed lot for the property located at 4621 Carothers Parkway. Mr. Anthony

stated the appellant indicates that new vehicles will be delivered to this property for processing, cleaning, and storage for up to ten days before going to new showrooms and car lots at multiple local dealerships. Mr. Anthony stated an automotive wash facility will also be located on the subject property. Mr. Anthony stated noted that the proposed uncovered, unenclosed lot would be classified as “outdoor storage” and not as a “vehicle sales and rental facility.” Therefore, the facility does not meet the exemption criteria listed in Section 4.1.6(1)(a)(i) of the *Zoning Ordinance*. Mr. Anthony stated per that portion of the ordinance, uses such as this one (“outdoor storage”) are required to be fully covered or screened. Mr. Anthony stated should the Board grant the appellant’s variance request, the outdoor storage lot could be constructed without a covering or enclosure. Mr. Anthony stated to summarize an excerpt from the Zoning Ordinance, which is noted in an earlier section of this staff report, in order for the Board to grant a variance, three standards must be established and include the following:

1. There must be an extraordinary or exceptional situation or condition pertaining strictly to the property considered (generally due to narrowness, shallowness, unusual shape or some exceptional topographic condition);
2. Strict application of the Ordinance would result in practical difficulties to, or undue hardship upon, the owner of the property; and
3. The relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zoning Ordinance.

Mr. Anthony stated the first standard to be considered is whether there is an extraordinary or exceptional situation pertaining to the subject property. Mr. Anthony stated the subject property has two significant constraints; it is irregularly shaped; see attached map for depiction and second, overhead power lines—which lead to a nearby substation—and various easements run through a portion of the site. Mr. Anthony stated the appellant argues that these constraints limit the appellant’s ability to construct a structure that meets City standards and due to these constraints, staff finds that there is an extraordinary or exceptional situation pertaining strictly to the subject property, thereby meeting the first threshold for granting a variance. Mr. Anthony stated the second standard to be considered is that of hardship or practical difficulty and the appellant notes that vehicle sales would be allowed on the subject property under the current General Commercial (GC) zoning. Mr. Anthony stated such a use would not have to be covered or enclosed and yet, strict application of the *Zoning Ordinance* would require the appellant to construct a covering or enclosed structure for vehicles being stored. Mr. Anthony stated additionally, the unique shape of the subject property would likely pose a challenge for any use type. Mr. Anthony stated ultimately, the Board must determine whether the requirement that the vehicle outdoor storage lot be covered or enclosed constitutes a hardship. Mr. Anthony stated the final standard the Board must consider is whether the requested relief would be a detriment to the public good or impair the intent and purpose of the *Zoning Ordinance*. Mr. Anthony stated covered outdoor storage lots for vehicles are not commonplace in Franklin. They are, however, common in areas that experience extreme temperatures. Mr. Anthony stated an aerial photograph of such a lot in Denton, Texas, is attached to this staff report. Mr. Anthony stated Staff finds that lot coverings—such as those depicted in the attachment—would not be in keeping with the existing character of either the City of Franklin or the Carothers Parkway corridor and further, a large, fully-enclosed vehicle storage warehouse would likely be out of place along the Carothers corridor. Mr. Anthony stated due to the *Zoning Ordinance’s* focus on preservation and enhancement of character and design, staff finds that granting this variance would not impair the intent and purpose of the ordinance.

Mr. Echols stated this is not a situation where they are just storing cars, but processing and prepping them. Mr. Echols stated they agree with staff comments in the report. Mr. Echols stated this is the best use for this lot.

Chair Jones requested to know if anyone wished to speak on this item from the audience.

Mr. Gamble state he was available to answer any questions.

Mr. Caesar requested to know if this was in addition to the car wash structure.

Mr. Gamble pointed out on plans what was available.

Chair Jones requested to know about the plant material.

Mr. Gamble stated the plant material along edge is evergreen and they will work with staff and electric company on height, etc.

Mr. Lebovitz pointed out materials on the plans and explained to board members.

Mr. Caesar requested to know if it was one lot or two lots.

Mr. Batson stated there will be two lots and the plat has been submitted to Planning.

Ms. Fischbach requested to know if lot one was not related to this project.

Mr. Batson stated correct.

After some discussion Mr. Caesar moved to approve the variance request to allow outdoor vehicular parking/storage 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 3-0.

Other Business.

No other Business was discussed.

Adjourn.

With there being no further business the meeting was adjourned at 7:00 pm.

Chair