

**MEETING MINUTES OF THE
FRANKLIN BOARD OF ZONING APPEALS
October 6, 2016**

The Franklin Board of Zoning Appeals held a regular meeting on Thursday, October 6, 2016 at 6:00 p.m. in the **City Hall Boardroom**.

Members present: Frank Jones
 Joel Tomlin III
 Gillian Fischbach
 Greg Caesar

Staff present: James Svoboda, Planning & Sustainability
 Kristen Corn, Law Department

The agenda read as follows:

Review of Minutes from July 7, 2016 and August 4, 2016 BZA Meeting

A **Zoning Map Interpretation Request** by Michael Story to the BZA to make an interpretation of the location of the Floodway Fringe Overlay (FFO) Zoning District boundary based on new FEMA documentation for the property located at the future lots 664 and 665, Section 28, Part of Tax Map 106, Parcel 181.28 of the Highlands at Ladd Park PUD Subdivision.

A **Zoning Map Interpretation Request** by the City of Franklin to the BZA to make an interpretation of the location of the Floodway Fringe Overlay (FFO) Zoning District boundary based on new FEMA documentation for properties located along Fivemile Creek and its associated tributaries that encompass multiple properties and developments along the southern Lewisburg corridor.

A **Variance Request** by Chuck Collett to vary the rear yard setback by five (5) feet for the property located at 420 Honeysuckle Circle.

A **Variance Request** by Keith Rice to vary the rear yard setback by eleven (11) feet for the property located at 709 Springlake Drive.

A **Variance Request** by Patrick Moody to vary the rear yard setback by ten (10) feet for the property located at 3158 Evelyn Court.

A **Variance Request** by Kimberly Smith to allow for an accessory structure to be taller than the primary structure for the property located at 435 Battle Avenue.

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

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

Minutes, July 7, 2016 and August 4, 2016 BZA meetings

Ms. Fischbach moved to approve both sets of minutes as submitted. Mr. Tomlin seconded the motion and the motion passed 4-0.

- 1. A Zoning Map Interpretation Request by Michael Story to the BZA to make an interpretation of the location of the Floodway Fringe Overlay (FFO) Zoning District boundary based on new FEMA documentation for the property located at the future lots 664 and 665, Section 28, Part of Tax Map 106, Parcel 181.28 of the Highlands at Ladd Park PUD Subdivision.**

Mr. Svoboda stated the applicant is requesting BZA to make an interpretation of the location of the Floodway Fringe Overlay (FFO) Zoning District boundary based on new FEMA documentation for the property located at the future lots 664 and 665, Section 28, Part of Tax Map 106, Parcel 181.28 of the Highlands at Ladd Park PUD Subdivision. Mr. Svoboda stated the property located at the future lots 664 and 665 in Section 28 of the Highlands at Ladd Park PUD Subdivision and the northeast side of the subject properties are currently located within the FFO Overlay District created by the special flood hazard areas established for the Harpeth River. Mr. Svoboda stated the appellant received approval of a Letter of Map Revision (LOMR-F) from the Federal Emergency Management Agency (FEMA) for these properties. Mr. Svoboda stated the Franklin Zoning Ordinance (cited above) prohibits the creation of new buildable lots within in the FFO District. Mr. Svoboda stated the LOMR-F obtained by the appellant removes the subject property from the 100-year floodplain and therefore the FFO District no longer coincides with the FEMA-designated floodplain on the subject property and pursuant to Subsections 2.2.4(1) (a) and 5.8.5(5) (c) 1, the appellant requests that the BZA interpret the FFO boundary to reflect the adjusted floodplain boundary as shown on the approved LOMR-F. Mr. Svoboda stated Staff recommends approval of the request to interpret the FFO boundary based on the LOMR-F approved by FEMA on July 15, 2016 (FEMA Case #16-04-5402A).

Mr. Reagan stated they are requesting to move two lots out of the FFO boundary as Staff stated.

Chair Jones requested to know if anyone wished to speak on this item and no one requested to speak.

Mr. Caesar moved to close public hearing and the public hearing was closed.

Mr. Tomlin moved to approve the request that the FFO boundary for the subject property be interpreted to be based on the LOMR-F approved by FEMA on July 15, 2016. Mr. Caesar seconded the motion and the motion passed 4-0.

- 2. A Zoning Map Interpretation Request by the City of Franklin to the BZA to make an interpretation of the location of the Floodway Fringe Overlay (FFO) Zoning District boundary based on new FEMA documentation for properties located along Fivemile Creek and its associated tributaries that encompass multiple properties and developments along the southern Lewisburg corridor.**

Mr. Svoboda stated in this case the City is the actual applicant for this request. Ms. Svoboda explained this was a City sponsored amendment to flood maps. Mr. Svoboda stated the City of Franklin is in the process of updating the most recent floodzone maps issued by FEMA and the area being considered for this request will be incorporated into the updated FEMA maps once the Ordinance adopting the new maps has been approved by the Board of Mayor and Aldermen. Mr. Svoboda stated Staff recommends approval of the request to interpret the FFO boundary based on the LOMR approved by FEMA on August 19, 2016 (FEMA Case #15-04-8778P).

Chair Jones requested to know if anyone wished to speak on this item and no one requested to speak.

Mr. Caesar moved to close public hearing. Mr. Tomlin seconded the motion and the motion passed 4-0.

Mr. Tomlin moved to approve the request that the FFO boundary for the subject property be interpreted based on the LOMR approved by FEMA on August 19, 2016. Ms. Fischbach seconded the motion and the motion passed 4-0.

3. A Variance Request by Chuck Collett to vary the rear yard setback by five (5) feet for the property located at 420 Honeysuckle Circle.

Mr. Svoboda stated the appellant requests a five (5) foot variance from the rear yard setback for the property located at 420 Honeysuckle Court to construct a covered patio. Mr. Svoboda stated 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. Svoboda stated the first standard to consider is whether there is an extraordinary or exceptional situation pertaining to the subject property. Mr. Svoboda stated the lot is located at the end of a cul-de-sac and is an atypical lot in terms of dimensions and layout and the lot's dimensions (147.31-foot depth and 44.79-foot width at the front and 179.48 width at the rear) are atypical of other more standard lots in the subdivision so 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. Svoboda stated the second standard to consider is that of hardship or practical difficulty and the Board must determine whether the inability to construct a covered patio on the subject property is a hardship or practical difficulty. Mr. Svoboda stated Staff reviewed the recorded plat for the property as well as GIS and aerial data for the property and the appellant appears to have few options for placing a covered patio adjacent to the house. Further, situating the covered patio on the eastern or southwestern sides of the house may be inconsistent with the orientation of the house and the design context of the neighborhood. Mr. Svoboda 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 and in this case, thirty-two (32) feet of the rear yard will remain unencumbered with the proposed covered patio 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. Svoboda stated Staff recommends approval of the five (5) foot rear yard setback variance requested by the appellant due to meeting all 3 requirements required to grant a variance.

Mr. Jim Walker was present to represent this item. Mr. Walker stated he had nothing to add.

Chair Jones requested to know if anyone wished to speak on this item and no one requested to speak.

Mr. Caesar moved to close public hearing. Ms. Fischbach seconded the motion and the motion passed 4-0.

Mr. Caesar questioned if the rearyard setback requirement was 37-feet.

Mr. Svoboda stated in the application materials it shows a 30-foot setback and that is the minimum setback line allowed.

Mr. Caesar moved to approve the variance request to vary the required setback by five (5) feet because the standards for granting a variance have been satisfied. Mr. Tomlin seconded the motion and the motion passed 4-0.

4. A Variance Request by Keith Rice to vary the rear yard setback by eleven (11) feet for the property located at 709 Springlake Drive.

Mr. Svoboda stated the appellant requests an eleven (11) foot variance from the rear yard setback for the property located at 709 Springlake Drive to construct a covered patio. Mr. Svoboda stated all applicable material are in your packets and there was a letter submitted, exhibit 6, concerning this project. Mr. Svoboda stated as mentioned previously, 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. Svoboda stated the first standard considered is whether there is an extraordinary or exceptional situation pertaining to the subject property and this lot is located midblock and is a typical lot in terms of dimensions and layout with the lot's dimensions (120-foot depth and 80-foot width at the rear) are typical of other more standard lots in the subdivision. Mr. Svoboda stated based on the subject property's typical shape, staff finds that there is not an extraordinary or exceptional situation pertaining strictly to the subject property, thereby not meeting the first threshold for granting a variance. Mr. Svoboda stated the second standard to consider is that of hardship or practical difficulty so the Board must determine whether the inability to construct a deck on the subject property is a hardship or practical difficulty. Mr. Svoboda stated the proposed rear yard location would appear to have the least impact on the surrounding properties and nearby residents.

Mr. Svoboda 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 and in this case, nine (9) feet of the rear yard will remain unencumbered with the proposed covered patio addition so granting this variance should not greatly impact any adjacent structure's access to light and air and 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. Svoboda stated Staff recommends disapproval of the eleven (11) foot rear yard setback variance requested by the appellant due to the first condition for a variance was not met

Mr. Rice stated they disagree on the first point due to believing the house is set back on the lot a little more. Mr. Rice brought photos and passed them around. Mr. Rice stated others on the street have decks

and covered porches. Mr. Rice stated there is a lake in their backyard and they want a place to enjoy that view.

Chair Jones requested to know if anyone requested to speak.

Mr. Bournes stated he is the owner of the property and they disagree with staff's comments. Mr. Bournes stated he did research by looking at minutes. Mr. Bournes stated last year this commission had a case with the same size lot and Mr. Baumgartner recommended approval. Mr. Bourne stated the lot was the same size and setback requirements were the same. Mr. Bournes stated the only difference between these two was the lot was up against a large open area. Mr. Bournes stated they also have a large open area and this makes an exceptional circumstance like the other request.

Chair Jones requested to know if there had been other phone calls or letters.

Mr. Svoboda stated not that he was aware of.

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

Mr. Svoboda requested to know what the part encroaching is.

Mr. Rice stated it is 8-foot 3 and 3/8 and this why we went with 9-foot.

Mr. Tomlin stated the first dotted line is the one encroaching 9-feet. Mr. Tomlin stated each request is done on a case by case basis.

Discussion ensued on the lake open space area.

Mr. Tomlin moved to approve the variance request to vary the required twenty (20) foot rear-yard setback by eleven (11) feet to nine (9) feet because the standards for granting a variance have been satisfied. Ms. Fischbach seconded the motion.

Mr. Caesar stated he was having some difficulty with the motion and the first standard being met. Mr. Caesar stated in his mind extraordinary or exceptional is not the size of the structure on the property, but the property itself. Mr. Caesar stated the element that makes this extraordinary or exceptional is the property abuts the common area.

Mr. Tomlin stated the extraordinary or exceptional situation is how it abuts the common area and the rear setback is inefficient.

With the main motion, having been made and clarified, the motion passed 4-0

5. A Variance Request by Patrick Moody to vary the rear yard setback by ten (10) feet for the property located at 3158 Evelyn Court.

Mr. Svoboda stated the appellant requests a twenty (20) foot variance from the rear yard setback for the property located at 3158 Evelyn Court to construct a deck. Mr. Svoboda stated the application in your packets does not reflect the correct information. Mr. Svoboda stated there is an existing patio that applicant wants to replace with a deck. Mr. Svoboda stated to summarize an excerpt from the *Zoning Ordinance*, which is noted in an earlier section of this staff report, 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. Svoboda stated the first standard to consider is whether there is an extraordinary or exceptional situation pertaining to the subject property. Mr. Svoboda stated the lot is located midblock and is a typical lot in terms of dimensions and layout and the lot's dimensions (106-foot depth and 91-foot width at the rear and 68 at the front) are typical of other more standard lots in the subdivision. Mr. Svoboda stated based on the subject property's typical shape, staff finds that there is not an extraordinary or exceptional situation pertaining strictly to the subject property, thereby not meeting the first threshold for granting a variance.

Mr. Svoboda stated the second standard to consider is that of hardship or practical difficulty and the Board must determine whether the inability to construct a patio on the subject property is a hardship or practical difficulty. Mr. Svoboda stated Staff reviewed the recorded plat for the property as well as GIS and aerial data for the property and the appellant appears to have few options for placing a patio adjacent to the house. Further, situating the deck on the eastern or western sides of the house may be inconsistent with the orientation of the house and the design context of the neighborhood. Mr. Svoboda stated the proposed rear yard location would appear to have the least impact on the surrounding properties and nearby residents. Subsection 3.3 (4) (b), Permitted Encroachments into Required Setbacks, (ii) in the Zoning Ordinance permits appurtenances to encroach into a required front or rear yard setback up to six feet and within side yards up to five feet from the property line provided a minimum of ten feet between buildings is maintained. Mr. Svoboda stated the applicant is requesting to an additional 3-foot encroachment into the required setback. Mr. Svoboda stated this appears to be for the convenience of the applicant and not an actual hardship and ultimately, the Board must decide whether the inability to construct a deck within the required thirty (30) foot rear setback constitutes a hardship or practical difficulty.

Mr. Svoboda 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. Svoboda 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. Mr. Svoboda stated in this case, twenty (20) feet of the rear yard will remain unencumbered with the proposed covered deck addition. Granting this variance should not greatly impact any adjacent structure's access to light and air. Mr. Svoboda stated as mentioned previously, the Zoning Ordinance permits an uncovered patio appurtenance to have a 6-foot encroachment into the required rear yard. Mr. Svoboda stated the additional encroachment is for the convenience of the applicant; however, the additional encroachment would not greatly impair the intent of the Zoning Ordinance. Mr. Svoboda stated

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. Svoboda stated in order, for the Board to grant a variance, all three variance standards must be met and the first and second conditions for a variance was not met. Mr. Svoboda stated Staff recommends disapproval of the ten (20) foot rear yard setback variance requested by the appellant.

Mr. Moody stated he had a photo to pass around showing the common area and a layout of the plot. Mr. Moody stated the back of the house is at exactly at 30-feet. Mr. Moody stated they have no additional space and they back up to an open space. Mr. Moody stated he feels the standards have been met.

Chair Jones requested to know if anyone requested to speak on this item and no one requested to speak so the public hearing was closed.

Chair Jones requested to know if this was a PUD development.

Mr. Svoboda stated it is zoned R3 and believes this was a subdivision created originally in the County. Mr. Svoboda stated due to the zoning it would have been developed as a PUD by the County.

Mr. Caesar requested to know if the deck would be connected to the house.

Mr. Moody stated yes pointed out on the plan.

Mr. Caesar moved to approve the variance request to vary the required thirty (30) foot rear-yard setback by twenty (20) feet given that there is an extraordinary or exceptional situation that the property does exist in a bend of the road, it does abut a common area and strict application of the Ordinance, would result in practical difficulties to, or undue hardship upon, the owner of the property; and 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. Tomlin seconded the motion and the motion passed 4-0.

6. A Variance Request by Kimberly Smith to allow for an accessory structure to be taller than the primary structure for the property located at 435 Battle Avenue.

Mr. Svoboda stated the appellant requests a variance for the property located at 435 Battle Avenue to allow an accessory structure to exceed the height of the primary structure by eight (8) feet. Mr. Svoboda stated subsections 4.1.2 (2) and (12) of the *Franklin Zoning Ordinance* specifically requires that an accessory structure be subordinate to and not exceed the height of its associated principal structure. Mr. Svoboda stated the proposed accessory structure would be located south of the appellant's house on the southern side of the subject property. Mr. Svoboda stated 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. Svoboda stated the first standard to consider is whether there is an extraordinary or exceptional situation pertaining to the subject property. Mr. Svoboda stated the lot is located midblock and is a typical lot in terms of dimensions and layout. Mr. Svoboda stated the lot's dimensions (262-foot depth and 50-foot width at the rear and the front) are typical of other more standard lots in the subdivision. Mr. Svoboda stated based on the subject property's typical shape, staff finds that there is not an extraordinary or exceptional situation pertaining strictly to the subject property, thereby not meeting the first threshold for granting a variance. Mr. Svoboda stated the second standard to consider is that of hardship or practical difficulty. Mr. Svoboda stated Staff reviewed the recorded plat for the property as well as GIS and aerial data for the property. Mr. Svoboda stated the request to construct the accessory structure taller than the height of the principal structure appears to be for the convenience of the applicant and does not represent an actual hardship. Mr. Svoboda stated the Board must determine whether the inability to construct an accessory structure taller than the primary structure on the subject property is a hardship or practical difficulty. Mr. Svoboda 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. Svoboda stated Staff has determined that allowing an accessory structure that exceeds the height of the associated primary structure would impair the intent and purpose of the *Zoning Ordinance*. Mr. Svoboda stated two portions of the *Zoning Ordinance* are particularly relevant in this case. Mr. Svoboda stated section 1.2.12 of the *Zoning Ordinance* indicates that a primary purpose of the requirements set forth in the ordinance is to preserve the character and quality of residential neighborhoods. Second, Subsections 4.1.2 (2) and (12) of the *Zoning Ordinance* clearly requires that an accessory structure be subordinate to and not exceed the height of its associated principal structure. Additional requirements within Subsection 4.1.2 clearly characterize that accessory shall:

- (1) Directly serve the principal use or structure;
- (2) Be accessory and clearly incidental to the principal use or structure; and
- (3) Be clearly subordinate in area, extent, and purpose to the principal use or structure.

Mr. Svoboda stated Staff has concerns about the precedent that granting this variance may set for future projects, particularly regarding the preservation of neighborhood character and quality. Mr. Svoboda stated to date, the City has strictly enforced the subordination of accessory structures largely as a means of preserving neighborhood character and quality. Mr. Svoboda stated in staff's judgment, an accessory structure that exceeds any dimensions of a lot's primary structure is no longer subordinate to the primary structure and may be disruptive to neighborhood character and quality. Mr. Svoboda stated for the Board to grant a variance, the appellant must demonstrate that all three of the standards required to grant a variance were satisfied. The appellant has not met the first and third conditions required for granting a variance and Staff recommends disapproval of the variance requested by the appellant.

Ms. Smith stated the property house was built in 1947 and is like a 1200-foot square home. Ms. Smith stated she would like to have additional space on her property and needs a space for her father to come and live. Ms. Smith stated this her motivation for additional space. Ms. Smith showed pictures of why it is difficult to build on the back of the home and must go up. Ms. Smith explained it is not very visible from the road. Ms. Smith stated she spoke with the existing neighbors about the addition and no one was against it. Ms. Smith passed out photos of the property.

Chair Jones stated there was no one here to ask for public comment, so it is open to board for questions.

Mr. Svoboda requested to know if Ms. Smith started out by talking to BNS about building.

Ms. Smith stated she was directed to Mr. Baumgartner.

Mr. Svoboda requested to know how tall her house was.

Ms. Smith stated it is one story about 17-feet tall.

Mr. Svoboda requested to know if there would be any demolition or just adding on to it.

Ms. Smith stated just adding on.

Mr. Svoboda stated he needed a moment to be able to go look up some information about the zoning.

Ms. Corn stated the board could go into a recess if so desired.

Mr. Caesar move to have a short recess. Mr. Tomlin seconded the motion and the motion carried 4-0.

Chair Jones called the meeting back to order.

Mr. Svoboda requested to know how big will the accessory structure be.

Ms. Smith stated under 600-feet. Ms. Smith stated the base of the garage is 23 x 23.6.

Discussion ensued on the size of the existing house and size of the proposed addition.

Mr. Svoboda stated in our Zoning Ordinance concerning accessory dwellings, there are accessory dwellings that can be detached, but must be subordinated to the principal dwelling by limiting the building foot print to 35% of the principal dwelling. Mr. Svoboda stated the proposed accessory dwelling footprint is 33-square feet over what is allowed. Mr. Svoboda read the excerpt from the Zoning Ordinance. Mr. Svoboda stated that the existing home is one-story home and the applicant would like the accessory dwelling to be 2-stories addition. Mr. Svoboda stated this is considered an accessory dwelling and not an accessory structure. Mr. Svoboda stated staff does recommend disapproval due to not meeting the three standards and a variance would have to be requested for this specific issue.

Mr. Caesar moved to defer this variance request to the next BZA meeting to allow staff and Ms. Smith to work together to provide the proper variance information for the board to consider. Mr. Tomlin seconded the motion and the motion passed 4-0.

Other Business.

Mr. Caesar requested staff work on the BZA application to make things more clear as to what the applicant is actually asking for.

Adjourn.

With there being no further business the meeting was adjourned at 7:22 pm.


Chair

