

**MEETING MINUTES OF THE
FRANKLIN BOARD OF ZONING APPEALS
May 6, 2021**

The Franklin Board of Zoning Appeals held a regular meeting on Thursday, May 6, 2021 at 6:00 p.m. in the City Hall Boardroom.

Members present: Jonathan Langley
Gillian Fischbach
Jeff Fleishour
Frank Jones

Staff present: Kelly Dannenfels, Planning & Sustainability Department
Eric Conner, Planning & Sustainability Department
Bill Squires, Law Department
Barrett Petty, Building and Neighborhood Services Department

The agenda read as follows:

Call to Order:

Chair Langley called the May 6, 2021 meeting to order at 6:00 pm. Chair Langley stated he would be taking a roll call and proceeded to do so. Mr. Joel Tomlin was absent.

Announcements:

Ms. Dannenfels welcomed everyone back to in-person meetings and thanked the Commission for their commitment to the City. Ms. Dannenfels stated we would continue this until the foreseeable future.

Review of Minutes from April 1, 2021, BZA Meetings

Ms. Fischbach moved to approve the April 1, 2021 meeting minutes. Mr. Jones seconded the motion and the motion carried 4-0.

Applications:

1. Variance Request To Allow For A 6' Fence Within A Front Yard On The Property Located At 150 Franklin Road (FZO §13.1.2).

Mr. Conner stated the applicant wishes to construct a 6-foot masonry and wrought iron fence in the front yard of the building along 150 Franklin Road. Mr. Conner stated this 5.38-acre parcel is commonly known as Battle Ground Academy, Lower Campus, and is zoned CI for Civic Institutional. Mr. Conner stated the applicant has also shown in their request gated entrances that have masonry pillars 7 feet in height and 6.5 feet tall fencing at those gates. Mr. Conner stated the

applicant has included designs of the proposed fencing, as well as a report from a security consultant for the property, as related to all proposed fencing within this application. Mr. Conner stated the designs, as well as the consultant's analysis and recommendation are included in the applicant's submitted materials. Mr. Conner stated the BZA may authorize a variance only when the request has met all three criteria in accordance with F.Z.O §20.10.6 and State law. Mr. Conner stated the staff has completed an analysis of the request in light of these criteria:

1. Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the Zoning Ordinance or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition, such a piece of property is not able to accommodate development as required under this Ordinance.

The subject property is not exceptionally narrow or shallow, nor are there any topographic conditions, or extraordinary situations that cause this property to not accommodate the required maximum 3-foot height requirement established in the Zoning Ordinance. Relative location to Downtown Franklin and the existence of pedestrians along the front of the property are not extraordinary situations, nor are they specific to this property, and are not valid reasoning to approve a Variance. Staff does not believe that this criterion is met.

2. The strict application of any provision enacted under the Zoning Ordinance would result in peculiar and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property.

Strict application of the Zoning Ordinance would not create peculiar and exceptional practical difficulties on this site. The application references the "ever-changing landscape of the downtown area" as a cause for practical difficulties as they relate to the safety of BGA students, staff, and guests. While staff acknowledges that security is an important consideration in school design, the streetscape improvements do not create a peculiar or exceptional practical difficulty for a property that fronts it. Sidewalks are part of the City requirements for a circulation network. There are no exceptional difficulties or hardships placed upon the owner with the construction of a fence that meets the requirements of the Zoning Ordinance, and therefore staff does not believe this criterion is met.

3. Such relief may be granted without substantial detriment to the public good and without substantially impairing the purpose and intent of the Zoning Ordinance.

Allowing for a 6-foot fence of the design included in this application would not be a detriment to the public good on this site, nor would it impair the purpose and intent of the Zoning Ordinance. The Zoning Ordinance limits the height of fences within front yards in order to prevent a site from being dominated by fencing and impairing views which may result in aesthetic and safety concerns for neighboring property owners and the community as a whole. Due to the visually open design of the fence, sight lines can still be maintained from the street and pedestrian way, and thus there is no direct conflict with the intent of the Zoning Ordinance. Staff believes this criterion is met.

Mr. Conner stated based on the reasoning detailed above, staff recommends disapproval of the Variance request, based on the failure to meet all criteria that authorize a variance to be established.

Chair Langley stated next, they would move on to the applicant.

Mr. Cross stated his company was the owner representatives for this project and stated they feel they do meet all criteria. Mr. Cross stated they feel they meet an exceptional situation due to this being an elementary school and the introduction of pedestrian ways, such as sidewalks and streetscape, cause additional security risk for the school therefore, that is why we are asking for a six foot fence instead of a three foot fence. Mr. Cross stated they were not looking for a decorative fence for the school, but one for security. Mr. Cross stated they feel they do meet an exceptional situation. Mr. Cross stated as far as the practical difficulties we have kids we need to protect and we also introduced to you a letter from a security consultant who does a lot of work with schools stated with a three foot fence someone could reach over and snatch a kid and run off with them. Mr. Cross stated third they don't feel like granting this variance will cause any detriment to the public good. Mr. Cross noted they would not be putting a fence up if not for the streetscape project being done with pedestrian traffic being too close to the playground. Mr. Cross explained they were switching the playground from the rear to the front due to switching the parking. Mr. Cross closed by stating they would be happy to answer any questions the Commission may have. Mr. Cross noted Historic Zoning approved this as well.

Chair Langley requested to know if there were any citizen comments and no one requested to speak.

Chair Langley stated he would entertain a motion to close the public comment.

Mr. Jones moved to close the public comment. Mr. Fleishour seconded the motion and the motion carried 4-0.

Mr. Jones stated he had a question for staff and stated he has had issues with the fencing ordinance for a good long while. Mr. Jones stated he can see particular instances where fencing is needed. Mr. Jones stated this board should remember we are responsible for the safety of the citizens of Franklin. Mr. Jones stated this is something he has wanted to bring the BOMA into it to get the rule updated to current needs. Mr. Jones noted his concern of a little child getting abducted.

Mr. Conner stated the sports field/playground you see on the document is not part of the regulations that requires three feet within the front yard. Mr. Conner stated that a six-foot fence is allowable around the sports field. Mr. Conner stated if you look at page 13 in your packet you will see the rest of the front yard that is required to be three feet in height.

Chair Langley stated to be clear the front end of the sports field must be three feet or six feet.

Ms. Dannenfelsler stated the portion along the play area may be six feet.

Chair Langley requested to know if they were only looking at the entry way section for the three foot fence.

Mr. Conner stated he believed it was the gated entries, as well as the northern portion of the site and asked the applicant if that was right.

Mr. Cross stated there is a fence that turns on the northern property line back to an existing chain length fence that it comes into and we are asking it to be six foot.

Chair Langley requested clarification one more time.

Mr. Conner stated the yellow highlighting indicates a front yard as it is defined by the ordinance with the exception of the southern portion which goes around the sports field/playground which is not part of this request because it is allowed to be six feet, so anything within that yellow portion aside from the sports field would need to be three feet unless the variance is approved.

Mr. Fleishour moved to defer the request for continued review and thinks they should go to the Board of Mayor and Alderman and do some additional research with zoning to make sure they know what they are asking for potentially given maybe some changes it could be granted.

Ms. Dannenfelsler stated the motion would need to be made to a date certain and staff has looked at this request and it has been a substantial process for the applicant up to this point because there was a process to go through for a Certificate of Appropriateness so we are clear on what the standards are today in our Zoning Ordinance.

Mr. Fleishour withdrew his motion.

Mr. Fleishour moved to disapprove the Variance request to allow for a 6-foot fence within the front yard of the property located at 150 Franklin Road because of the criteria required for granting a variance as described in the staff report. Ms. Fischbach seconded for discussion.

Mr. Fleishour stated where the three foot picks up where you are going to create a loop to come in what are you going to do there for the traffic, Mr. Cross.

Mr. Cross stated they want to secure the perimeter of the property not just the playground. Mr. Cross stated the gates will be closed when there is no drop off or pickup and you must press a button at the gate to seek entrance in between those times.

Mr. Jones requested from Ms. Dannenfelsler her opinion about this matter as far as if there is anyway to move based on the ordinance and the student body.

Ms. Dannenfelsler stated based on the Ordinance and the requirements this was their path to try to request a variance to the standards of the Ordinance and based on that this is their step to show they have met the three criteria required for a Variance. Ms. Dannenfelsler stated so the vote is up to you whether the criteria has been met.

Mr. Langley stated he understands the reason for that provision in the Zoning Ordinance especially for residential areas. Mr. Langley stated he did feel the context here is a lot different. Mr. Langley stated the first criteria has some leeway, at least from the Boards perspective and it is worded

extraordinary or exceptional situation or condition. Mr. Langley stated we don't want to treat one situation differently even though they are individual we don't want to treat those differently and I think this is a unique site. Mr. Langley stated he sees both sides of it and explained.

Mr. Jones stated the amount of traffic is going to increase in that area as well as foot traffic.

Mr. Cross stated he felt they met criteria two as well because it would cause a hardship on the school. Mr. Cross stated they have a security consultant that backs it up. Mr. Cross stated they feel like they met criteria three as well because it would not be a detriment to the public good.

Ms. Fischbach stated she is trying to find the room in the text of the Ordinance that would allow an interpretation that of an exceptional condition that is not based on topography.

Mr. Jones asked if the river would be an exceptional situation or topography.

Ms. Fischbach stated no.

The motion for disapproval failed.

Chair Langley stated we are back to a new motion.

Ms. Fischbach moved to approve the variance request to allow a six foot fence within the front yard property located at 150 Franklin Road because I do believe the three criteria have been met because I do believe this is an exceptional situation due to this being a school, not providing it is a hardship upon the owner and I do believe such relief may be granted without detriment to the public good and without substantially impairing the Zoning Ordinance. Mr. Jones seconded the motion and the motion carried 4-0.

Other Business.


No other business.

Adjourn.

Chair Langley stated he would entertain a motion to adjourn.

Ms. Fischbach moved to adjourn. Mr. Jones seconded the motion and the motion carried 4-0.

With there being no further business, the meeting was adjourned at 6:30.


Chair