



DRAFT Meeting Minutes

Board of Zoning Appeals

Thursday, December 7, 2023

6:00 PM

Board Room

CALL TO ORDER

Chair Jonathan Langley called the meeting to order at 06:01 PM

Board Members Present: Greg Caesar, Jonathan Langley, Lee Reeves, and William Scales

Board Members Absent: Jeff Fleishour

Staff Members Present: Bill Squires, Emily Wright, Ariella Stanford, and Lori Jarosz

CITIZEN COMMENTS (Open for citizens to be heard on any issue or concern, including those related to items on the agenda. Please submit a Speaker Card at the beginning of the meeting if you would like to address the Commission. If you would like to speak on an agenda item, the Chair will hold your comment until the public comment period associated with the item. As provided by law, the Commission shall make no decisions or consideration of action of citizen comments for items not on the agenda, except to refer the matter to the Planning Director/Staff for administrative consideration, or to a schedule the matter for consideration at a later date. Those addressing the Commission are requested to come to the microphone and identify themselves by name and address for the official record. The Chair may restrict the period for public comment, including the length of the public comment period, the number of individuals who can speak and the length of time each individual may speak. When time allows, the standard individual public comment time is two minutes.)

Chair Jonathan Langley asked for citizen comments. There were none.

Comments on agenda items may be made in person at City Hall or by emailing planningintake@franklin.tn.gov by noon on the day prior to the meeting. Comments will be submitted for the record.

APPROVAL OF MINUTES

1. **Consideration Of Approval Of The November 2, 2023 BZA Minutes.**

Sponsors:

Chair Jonathan Langley asked for a motion to approve the Minutes from the November 2, 2023, BZA meeting.

Commissioner Greg Caesar motioned, seconded by Commissioner William Scales, to Approve the Minutes.

Chair Jonathan Langley asked for a roll call vote. The motion carried 4-0.

ANNOUNCEMENTS

Chair Jonathan Langley asked if Staff had any announcements.

Ms. Emily Wright announced that Board Member Greg Caesar will be stepping down as a member of the Board of Zoning Appeals as he has been elected as an Alderman for the City. Ms. Dorinda Smith is set to be

appointed by Mayor Moore and approved by BOMA at the December 12, 2023, Board of Mayor, and Aldermen meeting. Ms. Smith's first BZA meeting will be January 4, 2024.

BZA BYLAWS AMENDMENTS

2. Consideration Of Approval Of Updated Board Of Zoning Appeals Bylaws.

Sponsors:

Ms. Wright explained that the BZA Bylaws are generally the same other than Section 5.1.5 (Member Removal), which says the BZA may recommend removal of a member to the Board of Mayor and Aldermen, but BOMA would be the body that takes the action.

Commissioner Lee Reeves thanked the staff for following up with a staff report regarding the Bylaw questions from the November meeting.

Commissioner Greg Caesar stated concerns about the Chairman being the only person who can declare closure of the public comment portion of the meeting. There may be a time when the Chair is anxious to move through the agenda without allowing enough time for public comment. Also, Commissioner Greg Caesar posed a question to staff, "What prompted the change to the public hearing portion of the meeting?"

Ms. Wright stated that staff discussed the topic at length and decided it was an unnecessary step in the order of business for the BZA, and it would provide meeting format consistency between FMPC and BOMA. There hasn't been a situation where a disagreement about closing the public hearing has been an issue. It is entirely up to the BZA about how you would like to conduct business. If the board would like to add the "board vote" back into the public hearing portion of the meeting, it can be added, and a revision can be made.

Chair Jonathan Langley suggested that because the board is listening to public comments and not taking action, it is a different situation. "I'm flexible about who can conclude the citizen comments, the chair or the entire board."

Commissioner Greg Caesar stated that he doesn't feel comfortable with a single person having the responsibility of deciding when to close the public hearing and would like to see the entire board vote on the closing of the public hearing. It's the responsibility of the board to serve the citizens by allowing time for public comment. Mr. Caesar suggested adding an amendment to the motion or a change to the original motion, whatever is appropriate, per Mr. Squires.

Mr. Squires stated that either way is suitable. The motion can be amended with the change and a second and then a vote on the amendment. Then a vote would be required on the motion, as amended. Or a change can be made to the original motion if the person who seconded the motion agrees with the change.

Commissioner Lee Reeves stated that he is amenable to making a change to the original motion but may need assistance in the procedure for changing the motion.

Mr. Squires stated that, as he understood Commissioner Greg Caesar, the board would like to revert to the original bylaws of the BZA that require a motion, second, and vote by all board members to close the public hearing section of the meeting.

Commissioner Lee Reeves and William Scales asked for confirmation of the bylaws section relating to the closure of the public hearing.

Commissioner Greg Caesar confirmed that section 7.1.7 (4) d (entire subsection) would be the only section that would revert to the original bylaws.

Commissioner Lee Reeves and William Scales both stated that they agree to maintain the original language of the BZA bylaws regarding closure of the public hearing portion of the meeting. A motion, second, and vote will continue to be required to close the public hearing portion of the meeting.

There being no further discussion, Chair Jonathan Langley asked the board members to vote.

Commissioner Lee Reeves motioned, seconded by Commissioner William Scales, to approve the updated BZA Bylaws. The motion carried 4-0.

APPLICATIONS

3. **A Variance Request To Waive The Substantial Improvement Requirement To Raise The First Floor Elevation Of A Historic Structure Above The Base Flood Elevation (To Remain In Place) Located Within The Historic Preservation Overlay, Central Franklin Overlay, And The Floodway Fringe Overlay For The Property Located At 800 Fair Street (F.Z.O. 17.6.4.B.).**

Sponsors: Emily Wright, Amy Diaz-Barriga, Ariella Stanford

STAFF: Ariella Stanford. The subject site consists of a 0.19-acre parcel zoned R4 – Residential 4 District with a historic house constructed c. 1910. The subject parcel is located within the Historic Preservation Overlay (HPO), Central Franklin Overlay (CFO) and the Floodway Fringe Overlay (FFO). The house is a contributing structure to the Hincheyville Historic District. Contributing structures may be defined as those which help to reinforce the historical integrity and architectural qualities of a historic district. The Historic Zoning Commission (HZC) reviews exterior alterations to properties located within the HPO in light of the Historic District Design Guidelines and is charged with preserving and protecting historic structures from alterations that would result in an adverse impact. When improvements are proposed to an existing residential structure in the floodplain and the value of those improvements is at least 50% of the value of the existing structure, the Zoning Ordinance requires that the first floor of the entire structure be elevated to three feet above the Base Flood Elevation. Because the value of the proposed improvements at 800 Fair Street are at least 50% of the value of the existing structure, the existing house would need to be elevated to three feet above the base flood elevation. The house already sits 2.33 feet above the base flood elevation, so the house would need to be raised 8 inches. Variances may be issued for the repair and rehabilitation of historic structures upon a determination that the proposed work will not preclude its continued designation as a historic structure and the variance is the minimum necessary deviation from the requirements of the Zoning Ordinance in order to preserve the historic character and design of the structure. It is recommended that variance requests for historic structures in the floodplain receive a recommendation by the HZC prior to consideration by the Board of Zoning Appeals (BZA). The HZC provided a favorable recommendation to the BZA at its November 2023 meeting for the building to remain at its existing First Floor Elevation, as the proposal is the most sensitive to the architectural qualities of the contributing structure and presents the least amount of adverse impact to the contributing status of the historic structure and the context of the overall historic district, with the following conditions:

1. Any proposed alterations to the building, including, but not limited to the following, must be presented to the HZC for consideration of a Certificate of Appropriateness prior to work commencing:
 1. the location of flood vent installation; and
 2. the location of all exterior electrical/plumbing/HVAC, including ductwork.
2. Issuance of a variance is required prior to work commencing.
 1. If issued a variance, the application must meet all the requirements of the Building & Neighborhood Services Department prior to issuance of a Building Permit.
 2. If issued a variance, the applicant shall obtain a floodplain development permit prior to any disturbance of the FFO.

The variance request is to allow the First Floor Elevation height to remain in its current position for the property located at 800 Fair Street.

STAFF ANALYSIS: Variances shall be issued only upon the determination that the variance is the minimum relief necessary, considering the flood hazard and the factors listed in Paragraph 17.6.5.A, Variances, shall only be issued upon:

1. A showing of good and sufficient cause. The building's status as a contributing property to the Hincheyville Historic District and the need to take measures to maintain this status amount to good and sufficient cause for granting a variance. The proposal is the most sensitive to the architectural qualities of the contributing structure and presents the least amount of adverse impact to the contributing status of the historic structure and the context of the overall historic district. The HZC provided a favorable recommendation to the BZA for these reasons. Staff finds that this criteria is met.

2. A determination that failure to grant the variance would result in exceptional hardship. The proposal is to keep the historic house at its existing level in order to keep its contributing status on the National Register of Historic Places and the local district designation for Hincheyville. The HZC determined that raising the house to meet Base Flood Elevation would cause it to become noncontributing to the Hincheyville Historic District, which is both locally designated and listed on the National Register of Historic Places. An attempt to raise the historic structure would result in the removal of the property's contributing status and would amount to exceptional hardship for the owner of the property. For these reasons, staff finds that this criteria is met.
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or Ordinances. The historic house already sits slightly above the Base Flood Elevation. In addition, revised flood maps are set to be released in June 2024, and it is predicted that this property will no longer be located in the AE flood zone and these regulations would not be required at that time. Furthermore, the HZC has approved the project plans as proposed and recommends approval of the variance request to maintain the structure's contributing status and the integrity of the historic district. Based on the recommendation of the HZC along with analysis of exhibits provided by the applicant, staff finds that granting the variance would not result in any of the outcomes listed above, and the third criterion is met.

RECOMMENDED MOTION:

Staff recommends the Board of Zoning Appeals move to approve the Variance Request To Waive The Substantial Improvement Requirement To Raise The First Floor Elevation Of A Historic Structure Above The Base Flood Elevation (To Remain In Place) Located Within The Historic Preservation Overlay, Central Franklin Overlay, And The Floodway Fringe Overlay For The Property Located At 800 Fair Street, because the criteria for granting a variance have been met.

Applicant: Amanda McCreary, Chisel Workshop. The historic home on Fair Street sits on a narrow lot two feet four inches above the floodplain. Raising the home to the required three feet above the floodplain would be detrimental to the historic foundation and damaging to the home's historic windows in pristine condition. With the equipment, space, and cost required to raise the home along with the fact the property may not fall into the 2024 revised floodplain map, we are requesting a variance to waive raising the first-floor elevation to three feet.

There being no citizen comments, Chair Jonathan Langley asked for a motion to close the public comment.

Commissioner Greg Caesar motioned to close the public comment, seconded by Commissioner Lee Reeves. The motion carried 4-0.

Chair Jonathan Langley asked for a motion from the Board.

MOTION:

Commissioner William Scales motioned to approve the variance request to waive the requirement to raise the first-floor elevation of a historic structure above the base flood elevation located within the HPO, CFO and the FFO for the property located at 800 Fair Street because the criteria for granting a variance have been met, seconded by Board Member Reeves.

Commissioner Greg Caesar asked the applicant if there were plans to use the space below the first floor.

Amanda McCreary. The space below the first floor is not tall enough to walk under but tall enough to store a lawnmower or other small lawn equipment. The design has been approved by the HZC with flood vents, gravel, and other flood proofing necessary.

Commissioner Lee Reeves asked Ms. McCreary for more information on the process of raising the structure including time, money, and process.

Amanda McCreary. For the situation of Fair Street, because of the proximity to the neighbors on both sides, it would be next to impossible to raise the structure using equipment requiring hand digging. Raising the home by hand would be labor-intensive as opposed to machine-heavy. Large girders are required to be placed under the home using a crane and would be impossible given the small space between the homes. The plumbing, electrical, and duct work run through the crawl space, requiring replacement. Most importantly, the beautifully maintained historic windows would be at risk along with the

concrete front porch.

There being no further discussion, Chair Jonathan Langley asked for the members to vote by roll call. The motion carried 4-0.

4. A Variance Request To Reduce The Width Of The Required Transition Buffer To A Minimum Of 11 Feet Along The Northern Property Line For The Property Located At 4309 S Carothers Road (F.Z.O. 8.1.2.).

Sponsors: Emily Wright, Amy Diaz-Barriga, Ariella Stanford

Commissioner William Scales stated that he lives in a neighborhood that's affected by this item, potentially posing a challenge of his impartiality and he would abstain from voting on this item.

STAFF: Ariella Stanford. This 5.5-acre parcel is zoned Neighborhood Commercial and is within the Flood Fringe Overlay. The applicant plans to develop the site with one retail building, a daycare, and a gas station/convenience store. The property is vested under the 2020 Zoning Ordinance, so it must comply with the regulations as outlined in the 2020 Zoning Ordinance. Per the 2020 Zoning Ordinance regulations, a 25' transition zone 1 buffer is required along the northern property line abutting a R2 zoned property. Due to the location of the property with respect to the existing South Carothers Road and Carothers Parkway intersection, the entrance to the site must be located within the required transition buffer zone to create a four-way intersection with the existing street network. It should also be noted that this Variance Request was approved in April 2021 but has since expired, hence the need to request the Variance again. The applicant is requesting a Variance To Reduce The Width Of The Required Transition Buffer To A Minimum Of 11 Feet Along The Northern Property Line For The Property.

STAFF ANALYSIS:

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. 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 located next to the existing intersection of South Carothers Road and Carothers Parkway, with the northern property line located just north of the necessary alignment for the intersection. The location of this property line in relation to the existing intersection alignment is an exceptional situation, as it prevents the property from accommodating engineering standards to connect the entrance to the property with the intersection of South Carothers Road and Carothers Parkway. Staff finds this criteria is met.
2. The strict application of any provision enacted under the Zoning Ordinance would result in peculiar and exceptional practical difficulties for or exceptional or undue hardship for the owner of the property.
Strict application of the Zoning Ordinance would prevent the entrance of the parcel from aligning with the existing intersection. For full access to the site, City of Franklin Engineering Standards would require access to be either at the existing intersection, or at least 800 feet from the existing intersection: however, the overall length of the property is less than 600 feet. The Zoning Ordinance transition zone buffer requirements would require the site entrance to be in a location that is not desirable for roadway connectivity and not supported by the City's Engineering Standards. This creates a hardship upon the owner, which requires the site entrance to be in the proposed location. Staff finds this criteria 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. Staff finds that the reduced buffer would not be a detriment to the public good and would not substantially impair the purpose and intent of the Zoning Ordinance. The transition zone buffer requirements in the Zoning Ordinance are intended to screen and separate new development from adjacent residential properties, which is still being addressed by the proposed project. The proposed buffer will be planted with evergreen landscape material to maintain a transition buffer adjacent to the residential property to the north. Additionally, aligning the entrance to the site with the existing intersection would create a higher public safety environment for vehicles entering and exiting the site. Staff finds this criteria is met.

RECOMMENDED MOTION: Staff recommends the Board of Zoning Appeals move to approve the Variance Request To Reduce The Width Of The Required Transition Buffer To A Minimum Of 11 Feet Along The Northern Property Line For The Property

Located At 4309 S Carothers Road, because the criteria for granting a variance have been met.

Applicant: Jeff Rosiak, Gamble Design Collaborative. The request for a variance was originally approved in 2021 and has since expired, but the project site plan has been conditionally approved. Mr. Rosiak noted from the conditionally approved site plan that on page four the 11-foot buffer limited the area where the entry drive comes and was expanded to a 33 feet buffer to the west. Also, there is an elevation change moving from south to north that requires a retaining wall along the property line. This substantially increases the screening of the property in addition to the landscape screening proposed.

Citizen Comments:

Sherri Mangiagli, 1020 Meandering Way. Ms. Mangiagli is opposed to the approval of the variance request and the project. In 2021 there was no public hearing because of COVID or if there was one, property owners were not notified. The increased traffic, noise and light pollution will contribute to the decline of neighbours' quality of life and property values. Ms. Mangiagli requests the board not approve the variance request.

There being no other citizen comments, Chair Jonathan Langley asked the board for a motion to close the public comment.

Commissioner Greg Caesar motioned to close the public comment, seconded by Commissioner Lee Reeves. The motion carried 4-0.

Chair Jonathan Langley asked for a motion from the Board.

Commissioner Greg Caesar noted that the distance requirement away from an intersection is 800 feet, but the length of this property is just over 540 feet so there's no way to squeeze an extra 262 feet out of the property. Potentially the applicant could ask for a variance to the 800 feet, which is not what they are doing.

Emily Wright. An engineering modification of standards could be requested through the engineering director, but it is Ms. Wright's understanding that it would be unlikely to be approved. Then it would go to the Streets and Buildings Standards Board of Appeals.

Commissioner Greg Caesar explained that to potentially satisfy the buffer, taking that route would cause a safety concern and doesn't sound like a reasonable workaround.

Commissioner Lee Reeves asked for more details regarding the retaining wall and landscaping screening.

Mr. Rosiak explained that landscaping would go above and below the retaining wall and would consist of robust use of evergreen trees to provide continuous screening. The buffer distance in some areas along the retaining wall/landscaping will be up to 33 feet.

MOTION:

Commissioner Lee Reeves motioned to approve the variance request to reduce the width of the required transition buffer to a minimum of 11 feet along the northern property line for the property located at 4309 S Carothers Road, seconded by Board Member Reeves.

Chair Jonathan Langley stated that the alignment of the intersection is critical, and engineering standards exist for a reason. To safely accommodate the needs of the property, there isn't an alternative way to do so, and the criteria for requesting a variance have been met.

Commissioner Greg Caesar stated that the board is being asked to grant a variance based on this particular property and not on the surrounding properties and how those interact with each other. If a variance is not granted, this property becomes unusable with no way to effectively get in or out. The strict application of the ordinance does put an unusual hardship on the owner of the property. Citizen comments are certainly heard loudly and are understood by the board. Considering the elevation change, it's reasonable to believe that this will substantially reduce the amount of noise and light pollution, in addition to the proposed retaining wall and landscape screening. Because of the unique and special circumstances of this particular property, it's reasonable to make an exception for this situation.

There being no further discussion, Chair Jonathan Langley asked for the members to vote by roll call. The motion carried 3-0 (Commissioner William Scales abstained from the vote).

5. A Variance Request To Allow For Encroachments Into Areas With Slopes Of 20% Or Greater For The Property Located At 116 Earlham Court (F.Z.O. 17.1.2.)

Sponsors: Emily Wright, Amy Diaz-Barriga, Ariella Stanford

STAFF: Ariella Stanford. This 0.59-acre lot is located at 116 Earlham Court within the Avalon Subdivision. The property is zoned PD Planned District, and it is within the 500 foot Buffer of Hillside Overlay. The applicant wishes to develop the parcel with a single-family home. The Avalon Subdivision was approved prior to the establishment of the HHO district and the 500-foot Buffer of the Hillside Overlay. This property now lies within the 500-foot Buffer of the Hillside Overlay. The majority of the lot is covered in slopes with grades over 20%, making the buildable area for the property just a small portion of the site. This topography creates difficulties for site design and development as the Franklin Zoning Ordinance does not allow for development on slopes greater than 20% to protect natural features. In addition, the Avalon Subdivision architectural guidelines require two-story houses to be a minimum of 5,000 square feet.

STAFF ANALYSIS:

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. 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 slopes on this lot cause an exceptional topographic condition which requires encroachment on 0% slopes in order to support development. As seen in the attached exhibit, slopes greater than 20% cover roughly half of the lot. Although the City is not responsible for enforcing neighborhood architectural guidelines, it is significant that this home would need to meet the minimum square footage requirements for the Avalon subdivision. With development being prohibited on slopes greater than 20%, a house fitting the Avalon Subdivision architectural guidelines could not be built on this lot. Staff finds this criteria is met.
2. The strict application of any provision enacted under the Zoning Ordinance would result in peculiar and exceptional practical difficulties for or exceptional or undue hardship for the owner of the property. Strict application of the Zoning Ordinance would create practical difficulties in the development of this site due to exceptional topographic conditions and the Avalon Subdivision architectural guidelines. The Avalon PUD Subdivision was approved by the City of Franklin prior to the adoption of the Hillside Hillcrest Overlay Zoning District (HHO) and today's applicable slope development standards. Development on the steep hillsides was anticipated when the development was originally approved, so the current Zoning Ordinance creates exceptional practical difficulties for the Avalon Subdivision that was established prior to the updated ordinance requirements. Seeing as slopes greater than 20% cover most of this lot, the application of the Zoning Ordinance would prevent development on this site. Staff finds this criteria 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. Staff finds that this request would not be a detriment to the public good, nor would it impair the purpose and intent of the Zoning Ordinance. The intent of the zoning for this property is to allow a single-family residential home on this lot, and this variance is the minimum necessary deviation from the requirements of the Zoning Ordinance in order to develop a single-family home on the lot, given the current conditions of the site. Staff finds this criteria is met.

RECOMMENDED MOTION: Staff recommends the Board of Zoning Appeals move to approve the Variance Request To Allow For Encroachments Into Areas With Slopes Of 20% Or Greater For The Property Located At 116 Earlham Court, because the criteria for granting a variance have been met.

Applicant: Rork Thomas, R Thomas Construction. Mr. Thomas stated that he was not aware of changes to the zoning requirements and requests the variance to get started on building the house.

There being no citizen comments, Chair Jonathan Langley asked the board for a motion to close the public comment.

Commissioner Greg Caesar motioned to close the public comment, seconded by Commissioner Lee Reeves. The motion carried 4-0.

Chair Jonathan Langley asked if the board had any questions for staff.

Commissioner Greg Caesar asked if the Hillside Hillcrest Overlay is depicted on the application materials and if the subject property encroaches into the HHO.

Ariella Stanford. The entire property at 116 Earlham, is covered in the overlays. Referring to the map, the green section is the HHO, and the light yellow is the 500-foot buffer.

Commissioner Lee Reeves asked staff for more context and information about what the zoning is trying to solve. Also, does staff have any concerns about the road that runs parallel to the subject's home at the end of the cul-de-sac.

Emily Wright. The Hillside Hillcrest overlay was initially created to help preserve the viewsheds of the hilltops and hillsides in Franklin for everyone, not just those who live at the top of the hill. The lots of Avalon were plotted and recorded prior to the enactment of this ordinance passed by the Board of Mayor and Aldermen and are excluded from the rationale. Most of the time, the lots generally meet the requirements required for a variance and along with the reasons stated are typically approved.

Ariella Stanford. Lady of the Lake Lane is within the subdivision.

Chair Jonathan Langley asked about the use of retaining walls as many of the homes in this area have retaining walls and if Neighborhood Building and Services would be reviewing those.

Emily Wright. Yes, the engineering staff usually reviews those as a lot of these lots have critical slopes.

Chair Jonathan Langley asked the board for a motion on the item.

MOTION:

Commissioner Greg Caesar motioned to approve the Variance Request to allow for encroachments into areas with slopes of 20% or greater for the property located at 116 Earlham Court, because the criteria for granting a variance have been met, seconded Board Member Reeves.

Commissioner Greg Caesar added that if the variance request was to encroach into the HHO, he would not be in favor of the motion. Because Avalon existed prior to the enactment of the current zoning ordinances, it is reasonable to dismiss this ordinance for the 116 Earlham Court property. Additionally, this is a perfect example of why the new ordinances have been created which is to protect the hillside viewsheds of Franklin for the future.

There being no further discussion, Chair Jonathan Langley asked for the members to vote by roll call. The motion carried 4-0.

6. A Variance Request To Waive Cross Access Requirement Between Adjacent Properties For The Property Located At 128 Fourth Avenue North (F.Z.O. 9.5.3.)

Sponsors: Emily Wright, Amy Diaz-Barriga, Ariella Stanford

STAFF: Ariella Stanford. This 0.32 acre property is zoned Downtown District and is within the Central Franklin Overlay and the Historic Preservation Overlay. There is an existing building on the property that is being used as commercial space, and a gravel area being used as parking for the property. Gravel parking lots are not allowed for commercial use properties, so the property received a Notice of Violation. The property owner then applied for a Certificate of Appropriateness from the Historic Zoning Commission for improvements to the parking lot and house. A note from the applicant was included on the COA submittal documents as an attempt to waive the cross access requirement. However, the COA submittal received an advisory comment from Staff that the note left on the submittal documents did not negate the requirement for cross access. A building permit was then submitted for the property to pave the gravel area, construct an addition to the structure, add an

ADA ramp, and add a metal fence and metal gate across the drive entry. At that point, the Building Permit application received a comment from BNS Staff that the cross access easement is required, per the Zoning Ordinance, and shall be recorded as part of the final plat. The existing building permit has a condition for a certificate of Occupancy that either a variance must be granted or cross access must be installed. If a variance is not granted, a Certificate of Occupancy would not be issued until the access easement is in place. The applicant is requesting a variance to waive the cross access requirement.

STAFF ANALYSIS:

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. 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. Staff does not find there are exceptional situations, topographic restraints, or unusual aspects of the shape of the property that prevent cross access from being provided. As shown in the Site Plan exhibit, there is room to accommodate the 20' cross access up to the property line at the rear of the property, and ADA complaint parking can still be provided. The proposed parking lot drive aisle can be extended to the property line to meet this requirement. Staff finds this criteria is not met.
2. The strict application of any provision enacted under the Zoning Ordinance would result in peculiar and exceptional practical difficulties for or exceptional or undue hardship for the owner of the property. Staff does not find that providing cross access would create exceptional practical difficulties for the owner of the property. Cross access can be provided within the proposed drive aisle. The proposed layout would not need to be revised, other than to plat the cross-access easement within the limits of the drive aisle. Staff finds this criteria is not 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. Staff finds that this request would not be a detriment to the public good, but it may impair the intent of the Zoning Ordinance. The Zoning Ordinance in this case is to ensure that all properties have the opportunity for connection to a public street, and the property behind 128 4th Ave North does not have a property line abutting a public street. Not providing cross access to the adjacent property would impair the intent of the Zoning Ordinance to ensure that property can access the street from any adjacent properties. Staff finds this criteria is not fully met.

Applicant: Sam Dreiling started off by noting he respectfully disagrees with staff comments. He stated (referencing the GIS map) that creating public access to this property would mean there is one way in and one way out of the parking lot across the subject property. The zoning ordinance cannot be met because the only way to access this property for the public would be through Mr. Ritzen's (owner) property. Because the property falls in the historic overlay, any development should minimize impacts on established areas. Referencing the Chisel Engineering documents, the proposed driveway would consume two thirds of the current parking and driveway. This situation is a private parking lot with private access to Third Avenue and there is no reason for the public to enter the lot behind the subject property, creating a fundamentally different circumstance. For example, the connectivity between Sam's Club and Lowe's makes perfect sense as both are businesses open to the public. The hardship on the property owner occurs because of the shape, location, and circumstances that exist. ADA access, including a ramp, has already been approved and built at the back of the house along with required ADA parking spots. He noted safety concerns with the proposed cross access easement in relation to ADA parking spots, such as reduced lines of sight and greater difficulty for individuals using the ADA access lane. He furthered his argument by restating that there is no public purpose undermined by granting the variance.

Citizen Comments:

Jason Ritzen, property owner. The language of the ordinance is not applicable across the board. Each situation should be considered individually. As Mr. Dreiling referred to connectivity between Sam's Club and Lowe's or from P.F. Chang's to the gas station. Those connections are practical situations where there is mutual consideration. Businesses are open to the public at large and, in this case, none of those criteria have been met for this situation. The Historic Zoning Commission recommended the historical property be maintained and to consider that the structure may revert to a home in the future. Having a public road that goes nowhere irreparably changes and prevents the intent as specified by the HZC.

Brandy Blanton, 406 Vienna Court. Mr. Ritzen invested and cleaned up this property and there are very few residents in this

section of Franklin. The owners of the adjacent properties do not need access through Mr. Ritzen's property. This is prime real estate and should not be disrupted.

There being no other citizen comments, Chair Jonathan Langley asked the board for a motion to close the public comment.

Commissioner William Scales motioned to close the public comment, seconded by Commissioner Greg Caesar. The motion carried 4-0.

Chair Jonathan Langley asked if the board had any questions for staff.

Chair Jonathan Langley asked if the change of use prompted the need for cross access and asked for more physical characteristics of the property? Is there a fence at the back of the property? Also, is there an existing easement to the landlocked parcel currently?

Commissioner Greg Caesar noted an email he received the day before. In summary, it referenced the deeded access, and it included a copy of the deeded perpetual access through the property at 121 Third Avenue North for the parcel that is landlocked. It was the legal filing of that perpetual deed that is transferable into the future.

Ariella Stanford. The change of use did trigger the need for the gravel driveway to be paved and then the easement requirement to be in place.

Emily Wright. The change of use is what triggers the zoning ordinance to come into play. When the driveway was poured with gravel, the vehicular traffic section of the ordinance was triggered. The true initial triggering of the ordinance coming into play was the change of use from residential to office.

Chair Jonathan Langley asked if the change of use from residential to office triggered the 50% rule came into play that says where you improve the value you have to come into compliance with the current zoning. "Are we dealing with change of use only?"

Ariella Stanford. Change of use, only.

Commissioner Greg Caesar stated that the person who owns that property, in the landlocked center, didn't raise the flag. It was the revisions we were asking Mr. Ritzen to make to the driveway which revealed the fact that you should have cross access, correct? The person that is on the other, the parking lot and the other segment.

Emily Wright. Correct. The person that owns the other parking lot and the other property did not trigger anything and in fact they have no requirements applied to their property at this time. They would have to come in with some sort of development or change of use for them to have any triggering of the zoning ordinance for their property.

Chair Jonathan Langley stated that it sounds like the email confirms an existing permanent easement for 121 Third Avenue that connects to the landlocked parcel. Can staff confirm this?

Emily Wright. Staff have not had a chance to review this new information and cannot answer that.

Sam Dreiling explained that this is true, and it is cited in the letter included in the submittal. Some time ago the two houses on Third Avenue and the lot behind it were jointly owned. As homes were built and sold off, the owner retained an easement which is essentially down the driveway of 121 Third Avenue on the right-hand side.

Chair Jonathan Langley noted footnote 19 in Mr. Dreiling's letter.

Commissioner Greg Caesar pointed out that a circular drive can be seen from Google Maps which identifies that you can get to the piece of property from Third Avenue North, which is a primary concern. Not providing access to a parcel is a concern. "Also, what was the purpose of the street view photo in the application documents?"

Sam Dreiling. The photo was from the Envision Franklin document showing the main street design concept. However, the photo doesn't depict the property, it is just of 4th Avenue. Also, regarding the easement to Third Avenue, this is a private

easement that the public can't access and, if so, would be considered trespassing.

Commissioner Lee Reeves asked what the applicability of zoning ordinance 9.5.3 in context with this situation.

Emily Wright. The cross-access easement applies to any nonresidential or mixed-use properties in the city of Franklin. So wherever located, a cross-access easement to the property line is required, even if it doesn't line up with the property next door, its set up for future connectivity to help with overreliance on streets. Downtown Franklin presents more of a pedestrian circulatory environment, and it isn't often seen because new parking lots are not typically built downtown.

Commissioner Lee Reeves asked if it was fair to say that this is usually applicable to office buildings being built next to a retail center?

Emily Wright. Quite commonly, yes, and it is done throughout the city.

Commissioner Lee Reeves asked if any of the overlays affect this requirement?

Emily Wright. None of the overlays get into cross access easements at all.

Chair Jonathan Langley stated that it appears all the factual questions have been answered.

MOTION:

Commissioner Greg Caesar motioned to approve a variance request to waive cross access requirement between adjacent properties for the property located at 128 Fourth Avenue North, seconded by Commissioner Lee Reeves.

Commissioner Lee Reeves stated that it took this meeting to unpack the complicated situation and facts to fully understand what the variance request was requesting. It was further complicated by the property being situated downtown in an historic area, as well as the sequence of events. The change in use triggering the new zoning laws being applicable may or may not have been intended. This is a peculiar instance where maybe the application of the ordinance wasn't intended to be enforced. At the first read (same email Commissioner Greg Caesar received), it appears it is a situation where a property is landlocked and has no access to a public street but is actually not the case and for this reason criteria number three should be considered as potentially meeting the variance requirement.

Chair Jonathan Langley stated that he agreed with Board Member Reeves. Considering the context of this particular situation, approval of a variance is the appropriate thing to do. Anytime this situation comes up downtown, the board may be faced with some of the same considerations. Cross access easements in Cool Springs have a completely different meaning and feel than the situation we're considering for 128 Third Avenue North.

Lastly, Commissioner Greg Caesar stated that considering the Sam's Club to Lowe's example, there aren't many people who will have the need move from 128 Third Avenue N. to 121 Third Avenue North.

There being no further discussion, Chair Jonathan Langley asked for the members to vote by roll call. The motion carried 4-0.

OTHER BUSINESS

Chair Jonathan Langley asked if there was any further business. There was none.

ADJOURN

Chair Jonathan Langley asked for a motion to Adjourn.

Commissioner Greg Caesar motioned, seconded by Commissioner William Scales, to Adjourn. The motion carried 4-0.

There being no further business, the meeting adjourned at 07:45 PM p.m.


Chair

1/4/24
Date