



Meeting Minutes

Board of Zoning Appeals

Thursday, August 1, 2024

6:00 PM

Board Room

Notice is hereby given that a meeting of the Board of Zoning Appeals will be held on the date, time, and location listed above. Additional information can be found at www.franklinton.gov/planning. For accommodations due to disabilities or other special arrangements, please contact the Human Resources Department at (615) 791-3216, at least 24 hours prior to the meeting.

Applicants are encouraged to attend the meeting, even if they agree with staff recommendation. The Board of Zoning Appeals may defer or disapprove an application/request unless someone is present to represent it.

Comments on agenda items may be made in person at city hall or by emailing planningintake@franklinton.gov until noon of the day prior to the meeting. Emailed comments will be provided to the Commission and included in the minutes, but not read aloud in their entirety during the meeting.

CALL TO ORDER

Chair Langley called the meeting to order at 6:00 PM.

Board Members Present: Jonathan Langley, Dorinda Smith, William Scales, and Jeff Fleishour

Board Members Absent: Lee Reeves

Staff Members Present: Bill Squires, Shanna McCoy, Chelsea Randolph, and Kelly Dannenfelser

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 Langley asked for citizen comments. There were none.

APPROVAL OF MINUTES

1. Consideration Of Approval Of The July 11, 2024 BZA Minutes

Sponsors:

A motion was made by Board Member Smith, seconded by Board Member Scales, to approve the Minutes from the July 11, 2024, meeting. The motion carried 3-0 (Board Member Fleishour not present for vote).

ANNOUNCEMENTS

Chelsea Randolph is filling in for Ariella Stanford for the meeting.

APPLICATIONS

2. **A Variance Request To Allow An Accessory Structure To Be Located A Minimum Of 0 Feet From The Rear Property Line For The Property Located At 3025 Natures Landing Drive (2014 F.Z.O. 4.1.2.(6)).**

Sponsors: Amy Diaz-Barriga, Ariella Stanford

Staff Presentation: Chelsea Randolph. Ms. Randolph stated that the applicable Zoning Ordinance requirements can be found in the 2014 F.Z.O. 4.1.2.(6) - General Standards and Limitations for Accessory Structures. The subject property is located at 3025 Natures Landing Drive and is zoned R-2 Residential District. This property is located in the Nature's Landing Subdivision which is Vested in the 2014 Zoning Ordinance, so this property must comply with the regulations of the 2014 Zoning Ordinance. The applicant is proposing retaining walls to level the sloped yard, along with an outdoor structure which includes a fireplace, and outdoor living features with a pergola. The Building and Neighborhood Services department has advised that this would be qualified as an accessory structure, and therefore must comply with the 5' setback requirement. The retaining walls are also proposed to be located right at the property line, but the 2014 Zoning Ordinance does not have regulations preventing retaining walls from being located at the property line. The retaining walls and accessory structure are proposed at this location primarily because there is an existing Sanitary Sewer Easement that extends across the center of the backyard. The existing Sanitary Sewer Easement is located 3' from the existing back patio of the house and extends 16' towards the rear property line. This leaves 12'-10" from the easement to the back property line, without accounting for the 5' Accessory Structure Setback from the rear property line. With the 5' setback, there is 7'10" of developable space between the Sanitary Sewer Easement and accessory structure setback from the rear property line. The applicant worked with Ben McNeil in our Water Management Department to ensure that the structure would not encroach on the Sanitary Sewer Easement. To prevent encroachment on the Sanitary Sewer Easement, the applicant is requesting a Variance to allow the accessory structure to be located a minimum of 0 feet from the property line.

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 Sanitary Sewer Easement encompasses more than half of the backyard space. With the Sanitary Sewer Easement and the 5' setback requirement, there is just under 8 feet of developable space, which severely limits the usable space for the homeowner. 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. To comply with the 5' accessory structure setback and prevent encroaching on the Sanitary Sewer Easement, it becomes difficult for the homeowner to utilize their remaining backyard space. The easement and rear accessory structure setback leave a very narrow space for any structure to be in the backyard. 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 or impair the intent of the Zoning Ordinance. The land behind this property is dedicated Open Space as a part of the Nature's Landing Subdivision, with a creek running through it. So the accessory structure being at the rear property line would not disturb any neighbors directly behind the property. Part of the intent of this Zoning Ordinance regulation is so that accessory structures are not too close to neighboring properties, and to have aesthetic consistency with setbacks. Because this property only has a dedicated open space behind it, the accessory structure wouldn't be too close to any neighboring buildings or structures. In addition, the rear property lines abutting the open space for the lots on the same side of the street as this property are not uniform. This is likely due to the location of the FFO surrounding the creek to the rear of these properties. For this reason, it would not be clearly evident that this accessory structure is misaligned with the neighboring property line setbacks along the street, seeing as the property lines vary. For these reasons, Staff finds this criteria met.

Recommendation: Staff recommends the Board of Zoning Appeals move to approve the Variance Request To Allow An Accessory Structure To Be Located A Minimum Of 0 Feet From The Rear Property Line For the property located at 3025

Natures Landing Drive, because the criteria for granting a variance have been met.

Applicant Presentation: Jason Brownlee. Mr. Brownlee stated that the biggest challenge of the project is the slope of the backyard. The homeowners have young children, making the slope dangerous. Mr. Brownlee worked with staff to create a functional and usable area that also meets the other requirements of the city.

Board Member Scales asked Mr. Brownlee for information about how the backyard would be made usable.

Mr. Brownlee stated that by raising the grade of the backyard not completely level but more level than it currently exists will enable the space to be usable by the homeowners.

Board Member Smith asked what the plan is for the space between the hardscape and the patio.

Mr. Brownlee explained that several options were considered, but grass was determined to be the best choice.

Citizen Comments: None

Board Member Scales motioned to close the public comment on Item #2, seconded by Board Member Smith. The motion carried 4-0.

Motion

Board Member Scales motioned to approve a variance request to allow an accessory structure to be located a minimum of 0 feet from the rear property line for the property located at 3025 Natures Landing Drive because the criteria for meeting a variance have been met, seconded by Board Member Smith.

Board Member Scales stated that the topography of the lot along with the easement makes it difficult to create usable space for the homeowners.

Chair Langley agreed with Board Member Scales and stated that in reviewing the plans there is a drastic drop-off in the backyard.

Board Member Smith stated that she drove by the property to see the rear slope and agreed that the slope is dramatic. Along with the open wild area behind the home, construction would not impact neighbors.

The motion carried 4-0.

3. A Variance Request To Allow For The Unfinished Side Of A Fence To Be Facing The Adjacent Property To The East For The Property Located At 500 Murfreesboro Road (F.Z.O. 13.1.3.E.).

Sponsors: Amy Diaz-Barriga, Ariella Stanford

Staff Presentation: Chelsea Randolph. The subject property is located at 500 Murfreesboro Road and is zoned R-2 Residential. It is also located within the Scenic Corridor Overlay, Central Franklin Overlay, and Flood Fringe Overlay. A Variance Request to allow a driveway to encroach into the front yard area located in front of the principal building was approved on January 11, 2024. Since approval of the Variance, the driveway has been constructed. As shown in the plans submitted for the approved Variance Request, the property currently has a 10-foot-wide driveway extending from Murfreesboro Road to the detached garage, and extending in front of the existing house, connecting to Ewingville Drive. Since the construction of the existing driveway configuration, fencing has also been installed on the property. The installed fences wrap around the existing home, along the North, South, East, and West sides of the property. The portions of the fence along the North, South, and West sides of the property are compliant with the regulations of the Zoning Ordinance. The portion of the fence that extends along the Eastern property line is not in compliance with the Zoning Ordinance. The Building and Neighborhood Services Department received a comment from a neighbor of this property, that the fence may not be in compliance with our regulations. Upon inspection from a Municipal Inspections Officer in the Building and Neighborhood Services Department, it was determined that the portion of the fence along the Eastern property line is in violation of Zoning Ordinance regulation 13.1.3. E. This portion of the fence has the "finished" side of the fence facing

inward to the property, so the unfinished side faces outward toward the adjoining lot to the East. The applicant has expressed that the fence was installed this way to avoid encroaching onto his neighbor's property. The applicant has provided documentation (included in the attachments) to show that the applicant has had to file an Order Of Protection against his neighbor. The applicant decided, with the limited space between the existing driveway and the side property line, that the fence had to be installed with the "finished" side facing inward. For this reason, this Variance Request is to allow the unfinished side of a fence to remain as constructed, facing the adjacent property to the East.

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. The locations of the existing driveway and the detached garage in relation to the property line limit the location of the fence along the Eastern property line. The existing driveway is located 24"-26" inches from the Eastern property line, so to install a fence in that location, it would have to be located at or near the property line. The applicant was instructed by his contractor that to install the fence with the "finished" side facing outward towards the adjacent property, he would need at least 3 feet of space to work from the "finished" side. Since there is only about 2 feet between the driveway and the Eastern property line, the contractor would not be able to install the fence with the "finished" side outward at that location without encroaching onto the neighbor's property. In addition, the driveway is the minimum width of 10' as outlined in the Zoning Ordinance chapter 10.1.17, and it cannot be moved over farther because it is already located very close to the existing house. Seeing as the owner would not be able to construct the fence along this side of the property line with the "finished" side facing outward and without encroaching on the neighbor's property, staff finds this criteria is met.
2. To construct the fence along this property line with the "finished" side facing outward, the contractor would have to encroach onto the neighbor's property due to insufficient area between the existing drive and the property line. Given the location of the existing driveway in relation to the house and detached garage, the driveway, and therefore the fence, cannot be moved farther from the property line to give more room to install it facing the correct way. Since the fence cannot be installed according to the Zoning Ordinance at this location without encroaching onto the neighbor's property, staff finds this criteria is met.
3. Staff finds that this request may be a detriment to the public good, and it would impair the intent of the Zoning Ordinance. Staff finds that the intent of this specific regulation is for both safety and aesthetic reasons. The posts and support wood on the unfinished side of a fence can be used to climb over the fence, so constructing the "finished" side facing outward prevents people outside the property from climbing over the fence. In addition, part of the intent is to have aesthetic consistency with the "finished" side of the fence facing outward toward the street and other residential properties. With this portion of the fence having the unfinished side facing outward towards the neighboring property, it does not meet the aesthetic aspect of the intent of this ordinance regulation. Staff finds this criteria is not met.

Recommendation: Staff recommends the Board of Zoning Appeals move to deny the Variance Request To Allow For The Unfinished Side Of A Fence To Be Facing The Adjacent Property To The East For The Property Located At 500 Murfreesboro Road, because the criteria for granting a variance have not been met.

Applicant: David Douglas. Mr. Douglas stated that 3 of the four sides of the fence were intentionally constructed and installed properly. He stated that he has done everything he can to comply with zoning and building department requirements in every way possible. Mr. Stratton then explained the background behind not being able to install the pickets on the outside/finished side of the fence. While the contractor was installing the final side of the fence, Mr. Stratton (an adjacent neighbor) proceeded to light a common tree stump that they share on their property line on fire and use a leaf blower to blow the fire into the face of the contractor. So Mr. Douglas told his contractor to stand down, leave the property, and come back at another point. The next morning, to avoid trespassing on Mr. Stratton's property, the contractor installed the pickets on the inside of the fence. Mr. Douglas asked the Board to consider the two competing laws carefully. If the pickets are to be installed as the Zoning Board and Building Department would like, then he must risk trespassing onto Mr. Stratton's property. He has been told that the Variance appeal board is the place to find resolution when you have two competing laws. There is a history of disagreement with Mr. Stratton thus the construction of the fence. Mr. Douglas stated that he had done his best to accommodate his own rights without infringing on the rights of Mr. Stratton. Mr. Douglas stated that according to the zoning ordinance, the fence and the finished side (if there is a shared property line and the fence is right on the property line) don't necessarily make the fence owned by one property owner or the other. If you have shared lots, any one lot is going to have fence pickets on the interior with this type of fence, so aesthetically he doesn't see how that is

ever accomplished unless you have a double sided fence. Mr. Douglas stated that he would put any type of fence up if he was allowed to, and Mr. Stratton is welcome to install pickets, at his expense, on his side of the fence to make the fence double-sided if he wants to.

Public Comment:

Jimmy Stratton, 502 Murfreesboro Road. Mr. Stratton stated that the sign outside says, "It's not to be about people." This situation is about the illegal fence constructed by Mr. Douglas. According to Mr. Stratton, the previous fence was removed in violation of Tennessee Law, a class 3 misdemeanor. The fence that was put up is in violation of the codes. Mr. Douglas stated claims that are partially true but he committed perjury and tampered with evidence, according to Mr. Stratton. Also, Mr. Stratton believes his neighbors have created their own hardships. The bottom line is the criteria for granting a variance have not been met.

John Steigel on behalf of his father, 100 Bluegrass Drive. Mr. Steigel stated that his father's property is adjacent to Mr. Stratton. While cleaning out leaves along the property boundary for his 81-year-old father, Mr. Stratton called the police seemingly for trespassing, according to Mr. Steigel. The next day, a no trespassing sign was displayed along with two new plants planted along the boundary. Over the years, Mr. Stratton has been difficult to talk to and come to agreement with amicably. So he can attest to the issues that have come up with Mr. Stratton.

Board Member Smith motioned to close the public comment, seconded by Board Member Scales. The motion carried 4-0.

Chair Langley asked staff about their viewpoint regarding a shared property line, fence ownership, and fence finished side verses unfinished side.

Ms. McCoy stated that if a fence is placed on a property line, fence ownership would be the person who installs the fence, and the finished side would face out to the adjacent property. In this situation, Mr. Douglas is building the fence, so he would be the owner and the finished side would face Mr. Stratton's property. The city has addressed this type of situation consistently over the years.

Board Member Smith asked staff for more specifics regarding what "encroachment" refers to in this situation; encroachment of the fence or encroachment of the workers when installing the fence.

Ms. Randolph stated that encroachment refers to the amount of space workers would need to install the fencing. So, the encroachment of the worker.

Board Member Smith stated that the worker's encroachment would be short-term, lasting one or two days.

Board Member Smith also stated that there are two fences on the property, a three-foot fence and a six-foot privacy fence. Which fence is the variance request referring to or is it both?

Ms. McCoy stated that the three-foot fence that's in the front yard is compliant, but the fence becomes non-compliant when it changes to the east side, as the posts are different.

Board Member Smith stated that when driving along Murfreesboro Road, the differences are difficult to see.

Motion

Board Member Smith motioned to deny the variance request to allow for the unfinished side of a fence to be facing the adjacent property to the east of the property located at 500 Murfreesboro Road because the criteria required to grant a variance request has not been met, seconded by Board Member Scales.

Board Member Smith stated that this is a tricky no-win situation, but given the home's location as one of the main routes into downtown Franklin and the multiple overlays governing the property, the BZA should remain true to the zoning ordinance. The personal dynamics between neighbors is understood and to be the most amenable neighbor would be to install the fence according to the zoning ordinance.

Board Member Fleishour suggested a condition to allow Mr. Douglas to install the fence correctly.

Chair Langley noted that the Board cannot create a condition on a motion to deny.

Mr. Squires stated that the Board may not impose a condition on the current motion, but the Board may incorporate a condition on a motion for approval. The condition would be a limitation or modification of approval.

Board Member Scales agreed with Board Member Fleishour that the applicant should be able to install the fence correctly, according to the zoning ordinance. Mr. Douglas is being prevented from installing the fence correctly, resulting in the request for a variance.

Board Member Smith noted that a request for a variance would not be necessary if the applicant is able to install the fence correctly.

Board Member Fleishour stated that had Mr. Douglas been allowed to install the fence correctly in the first place, Mr. Strafford would not have the unfinished side of the fence facing his property.

Chair Langley stated that the purpose of the Board of Zoning Appeals regarding a variance request is to evaluate the application based on the three criteria required for granting a variance. In this situation, the three criteria have not been met. Outside of evaluating this application on these standards, the BZA is not the appropriate forum to govern interpersonal dynamics between neighbors.

Board Member Scales stated upon denial of the variance request, the applicant can take steps to install the fence according to the zoning requirements that will maintain the aesthetics and comply with the multiple overlay districts for this entrance into downtown Franklin.

Chair Langley asked the Board to vote via roll call.

The motion to deny the request carried 4-0.

OTHER BUSINESS

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

ADJOURN

Board Member Scales motioned to adjourn the August 1, 2024, BZA Meeting, seconded by Board Member Smith.

There being no further business, the meeting adjourned at 6:42 PM.


Chair

9/5/24
Date