

**CITY OF FRANKLIN
BOARD OF ZONING APPEALS
Meeting Minutes
May 1, 2025**

Board Members Present:
Jonathan Langley, Chair
John Boehms
William Scales
Dorinda Smith
Jeff Fleishour

Staff Present:
Bill Squires
Shanna McCoy
Amy Diaz-Barriga
Ariella Stanford

CALL TO ORDER

Chair Langley called the meeting to order at 6:01 p.m. with a roll call of the Commissioners present.

Chair Langley asked if there were any citizens who would like to speak to the Board members, there were none.

APPROVAL OF MINUTES

Item #1. Consideration of Approval of the February 6, 2025, Meeting Minutes.

Board Member Smith motioned to approve the minutes from the February 1, 2025, BZA meeting, seconded by Board member Boehms.

Vote Tally: 5-0

Motion passes

Item #2. A Variance Request To Allow A Loading Area To Be Located To The Side Of The Building For The Property Located At 490 Downs Boulevard (F.Z.O. 10.6.3.B.).

Staff Report: Ariella Stanford. The subject property is located at 490 Downs Boulevard and is zoned Light Industrial District. The property is currently vacant, and the applicant is proposing a warehouse for excess inventory on the site. The proposed use requires a loading dock area for delivery purposes, and the Zoning Ordinance requires one-site loading dock areas to be located to the rear of the building adjacent to the loading doors. Given the width and depth of the site, the applicant has had difficulty designing the site in a way that a semi-trailer could access a loading area to the rear of the building. The design of the building with the loading area in the rear is not conducive to the site. The applicant has also stated that there will be minimal traffic to the site, and no daily workers on the site, so the configuration should not have a negative impact on daily traffic to the site. To design the site in a way that is functional for semi-trailer access, the applicant is requesting a Variance to allow a loading area to be located to the side of the principal building.

Staff also wanted to note that the current setbacks for the property do not match the proposed setbacks shown on the plans. The applicant intends to re-plat the property to establish easements and revise the setbacks to match the proposed design. The proposed setbacks meet the Zoning Ordinance requirements for the Light Industrial District, so Staff does not currently foresee issues with the proposed setbacks, but they will need to be revised to proceed with the proposed design.

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.

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.

Due to the width and depth of the site, the applicant has not been able to design a building with a loading area to the rear is practical for a semi-trailer to be able to access. As shown in the "Infeasible Turning Exhibit", the building would need to be an odd shape with a loading area in the rear that is difficult to access. Seeing as the size and shape of the property is preventing accommodation with the Zoning Ordinance in a way that is practical for the use, Staff finds this criteria is met.

Criteria 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.

The strict application of the Zoning Ordinance would result in an oddly shaped building with a loading area in the rear that is difficult to access. To fit a driveway where a semi-trailer could access the loading area in the rear area of the property, the driveway to the rear would need to be located very close to the east side of the property and require the semi-trailer to back out from behind the building. This Zoning Ordinance regulation is preventing a semi-truck from practically accessing a loading area on a lot that is zoned Light Industrial. Staff finds this criteria is met.

Criteria 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 does not find that this would be a detriment to the public good or impair the intent of the Zoning Ordinance. The properties to the east, west, and south are also zoned Light Industrial District, so this intended use with the semi-trailer loading area fits contextually with the zoning along the street. Additionally, the neighborhood to the north of this property (behind) is residential, so the loading dock being located to the side of the building is farther from the residential neighborhood than if it were behind the building, so the loading area should not have a negative impact on the residential neighborhood behind this property. The primary intent of the Zoning Ordinance in this case is to prevent loading areas from being highly visible from the street. The applicant has worked to have the loading area to the side of the building, rather than the front, and intends to screen the loading area from the property to the east. This ensures that the loading area isn't highly visible from Downs Boulevard. Staff finds that this design would not be a detriment to the public good and is intentional to meet the intent of the Zoning Ordinance in this case.

RECOMMENDED MOTION: Staff recommends the Board of Zoning Appeals move to approve the Variance Request To Allow A Loading Area To Be Located To The Side Of The Building For The Property Located At 490 Downs Boulevard, because the criteria for granting a variance have been met.

Applicant: CJ Murrell, 615 Design Group. Mr. Murrell explained that in addition to the site being narrow, the easement for connectivity along Downs Boulevard pushes the building further back on the site making it difficult for a semi-truck to maneuver around for loading and unloading. The only setbacks that would change would be the side and rear to allow for a loading dock on the side of the building. A loading dock on the side of the building would provide enough room for a semi-truck to turn and unload safely. Screening of the side loading dock will with evergreen trees or fencing will reduce visibility.

Public comment:

Nick Basquill-White, 414 Figuers Drive. Mr. Basquill-White explained that his concerns include safety as the building will be unmanned site. Noise is also a concern for neighbors who live behind the site along with flooding issues. Water runoff from Franklin Special School District causes flooding. Adding more concrete without proper drainage may worsen the issue.

Jared Sullivan, 419 Figuers Drive. Mr. Sullivan stated that his property is located behind 490 Downs Boulevard and is separated by an old railroad berm. Moving the building further back would disturb the current water flow of the area and potentially create flooding. Mr. Sullivan further stated that his particular neighborhood has ongoing flooding and drainage issues that haven't been addressed by the city and would prefer the building of the subject property not to be located further back on the site.

Board Member Scales motioned to close the public comment, seconded by Board Member Smith.

Vote Tally: 5-0

Motion Passes

Board Member Scales asked staff if the Variance Request is approved, would the setback revisions be required by the applicant.

Ms. Diaz-Barriga stated that (I couldn't hear what she said)

Board Member Fleishour asked the applicant if a detention pond would be utilized for stormwater runoff and if there would be less water runoff after the building is constructed. Board Member Fleishour asked how the existing culvert will be addressed.

Mr. Murrell stated that the required water runoff must be lower than it is now, which will be done using detention measures along with capturing the water onsite and releasing it somewhere off site. There is a conveyance on the west side of the site that captures water from the storage facility and an existing pipe that runs from west to east. The pipe will remain or be resized to accommodate the water runoff. The culvert will remain, as well.

Board Member Fleishour asks if staff have addressed the calculations for water runoff and if those calculations are correct.

Ms. Diaz-Barriga stated that those calculations would be addressed by city engineers during the site plan stage.

Mr. Murrell added that staff encouraged moving forward with the variance request prior to a submittal of the site plan.

MOTION

Board Member Smith motioned to approve the Variance Request To Allow A Loading Area To Be Located To The Side Of The Building For The Property Located At 490 Downs Boulevard because the criteria required for the variance request has been met, seconded by Board Member Boehms.

Vote Tally: 4-1 (Board Member Fleishour voting against)

Motion Passes.

Item #3. A Variance Request To Allow A Fence In The Front Yard Area With A Maximum Height Of 7 Feet For The Property Located At 1005 Merylinger Court (F.Z.O. 13.1.2.D.).

Staff Report: Ariella Stanford. The subject property is located at 1005 Merylinger Court and is zoned Regional Commerce 4. The property currently has one existing principal building that is located 165 feet from the front lot line and the owner is proposing a gym facility behind the existing building. This property received approval from the Board of Zoning Appeals in September 2023 for the proposed principal building to be located 225 feet from the front lot line. Because the existing and proposed buildings are located far from the front lot line, a large portion of the lot is considered the front yard area, and most of the front yard area runs along the rear and side of the properties southwest of this site. For privacy purposes, the owner would like to have a 7-foot fence extending along both sides of the property in the front yard area.

Staff Analysis:

Criteria #1. The shape of this lot and the fact that most of the front yard area runs along the rear and side of the properties southwest of this site, make this property unique. With the existing building being located far from the front lot line due to the uniquely narrow front end of the lot, the existing building is facing the rear and side of most of its neighboring properties. To have privacy from the rear and sides of neighboring properties that most other properties are allowed to have, this property cannot accommodate the Zoning Ordinance requirements for fence height in the front yard area. Staff find that this criteria is met.

Criteria #2. Most of the front yard area runs along the rear and side of the properties southwest of this site, which means those neighboring properties would be allowed to have fences up to 8 feet along that same property line. This creates a unique hardship, that this property owner cannot have a 7-foot fence along a property line abutting the rear of another property, where the other property could have an 8-foot fence at that same location. Therefore, this Zoning Ordinance regulation is preventing this property from having reasonable privacy from the side and rear yard of its neighboring properties. Staff find this criteria is met.

Criteria #3. Staff find that the fence height is not a detriment to the public good and meets the intent of the Zoning Ordinance. Part of the intent of this Zoning Ordinance in this case is to ensure that fences in front yard areas and facing streets are consistent in height and are not obtrusively tall along the street. Given the unique shape and the recessed location of the existing and proposed buildings, the fence height would be minimally visible. Much of the fence would be screened by trees, and the unique shape and orientation of the property contributes to the fence being contextually appropriate along the property lines. Staff finds this criteria is met.

RECOMMENDED MOTION: Staff recommends the Board of Zoning Appeals move to approve the Variance Request To Allow A Fence In The Front Yard Area With A Maximum Height Of 7 Feet For The Property Located At 1005 Merylinger Court, because the criteria for granting a variance have been met.

Applicant: Luke Klausner, Civil Engineer. Mr. Klausner stated that the variance request is straightforward with the lot having more frontage than a typical site.

Citizen Comments:

Dr. Paula Schuerer, 1115 West McEwen Drive. Dr. Schuerer stated her concerns about the existing chain link fence which she was told, by the city, would be temporary. The fence was installed in August of 2022 using a bobcat, auger and set in concrete. Dr. Schuerer explained that she was told by the city that the fence would be removed by January 1, 2024, but it still stands today along with 12 shipping containers sitting on the lot. The fence does not comply with the zoning ordinance and Dr. Schuerer would like to know if the fence will be removed.

Board Member Fleishour motioned to close the public comment, seconded by Board Member Smith.

Vote Tally: 5-0

Motion Passes

Chair Langley asked Ms. McCoy to address the issue of the chain link fence.

Ms. McCoy explained that the fence was constructed illegally and was advised by the owner that building permits would be acquired so the city considered the fence temporary. The city has made it abundantly clear to the applicant that a certificate of occupancy would not be issued until the fencing and storage containers removed from the site.

Chair Langley asked the applicant to comment on the timeframe of the project.

Mr. Klausner stated that the goal is to be open by July 2025. The chain link fencing will be replaced with a wood fence with masonry columns and constructed to the standards of the zoning ordinance. The storage containers will be removed but currently house equipment.

MOTION

Board Member Scales motioned to approve A Variance Request To Allow A Fence In The Front Yard Area With A Maximum Height Of 7 Feet For The Property Located At 1005 Merylinger Court because the criteria for granting a variance request have been met, seconded by Board Member Smith.

Vote Tally: 5-0

Motion Passes

Item #4. A Variance Request To Allow One Accessory Structure And One Minor Accessory Structure To Be Located To The Side Of The Principal Building For The Property Located At 900 Brink Place (F.Z.O.3.6.5.).

Staff Report: Ariella Stanford. The subject property is located at 900 Brink Place and is zoned R3 Residential 3 District. There is an existing single-family house on the property and the owner is proposing one accessory structure (detached garage) and one minor accessory structure for storage use. Because this property is a corner lot, it fronts both Brink Place and Del Rio Court, with the front door facing Brink Place. The existing house is set back 50 feet from Brink Place which significantly reduces the backyard space, so the owner is proposing an accessory structure and a minor accessory structure to the side of the house, between the existing house and Del Rio Court. The Zoning Ordinance requires accessory structures to be located at least 5 feet behind the principal building. For this reason, the applicant is requesting a Variance to allow an accessory structure to be located to the side of the principal building.

Staff Analysis:

Criteria #1. This property is a corner lot, the existing house is set back significantly from Brink Place, and there is a small existing shed in the backyard. Given these conditions, the desired accessory structure and minor accessory structure cannot fit in the backyard area and therefore is not able to accommodate development as required under this Ordinance. Staff find this criteria is met.

Criteria #2. The strict application of the Zoning Ordinance in this case would prevent the owner from having an accessory structure for storage use. The existing home does not have a garage that is suitable to store equipment to maintain the property, and the existing accessory structure in the backyard is much smaller than the required size of a garage so it is not suitable for storage space. Given the conditions of the lot, the only space that can fit the proposed accessory structure and minor accessory structure is the side yard facing Del

Rio Court, which does not comply with the Zoning Ordinance requirements. Therefore, the strict application of the Zoning Ordinance is preventing the owner from having these accessory structures to store equipment to maintain the property. Considering this hardship, Staff finds this criteria is met.

Criteria #3. Staff find this request would not be a detriment to the public good or impair the intent of the Zoning Ordinance. Part of the intent of this regulation is to minimize visibility of accessory structures from the street, and prevent accessory structures from being in front of the principal building. There is tall and lush greenery that extends from the corner at Brink Place and Del Rio Court to the northwest corner of the property. Given the unique shape of the property, this greenery would minimize visibility of the accessory structures from both Brink Place and Del Rio Court. With the greenery to screen the accessory structures, and the accessory structures being to the side of the existing building, the proposed request meets the intent of the Zoning Ordinance. Since they will be well screened from the street, the accessory structures should not have a negative impact on the neighborhood aesthetically or be a detriment to the public good. Staff find this criteria is met.

RECOMMENDED MOTION: Staff recommends the Board of Zoning Appeals move to approve the Variance Request To Allow One Accessory Structure And One Minor Accessory Structure To Be Located In Front Of The Principal Building For The Property Located At 900 Brink Place, because the criteria for granting a variance have been met.

Applicant: Casey Chrisman, applicant/owner. Mr. Chrisman explained that the original builder set the ranch-style home further back on the property to accommodate the width of the home. This created the small backyard.

Citizen Comments: None.

Board Member Smith motioned to close the public comment, seconded by Board Member Fleishour.

Vote Tally: 5-0

Motion Passes

Board Member Smith asked if there would be any changes to the accessory building driveway.

Ms. Stanford stated that there would be no changes to the driveway as the driveway is not intended for daily vehicle use.

Board Member Smith noted the lush greenery screening referenced in criteria #3 and asked if the city would require maintenance of the screening since it is part of the criteria. As it stands, the area appears to be unkept and overgrown.

Ms. Diaz-Barriga stated that accessory structure screening is not required by the zoning ordinance, but an existing condition staff noted in the report.

Board Member Boehms asked about the height of the accessory building.

Mr. Chrisman stated that the building is 22 feet in height and must be lower than the principal building according to the zoning ordinance.

MOTION

Board Member Scales motioned to approve A Variance Request To Allow One Accessory Structure And One Minor Accessory Structure To Be Located To The Side Of The Principal Building For The Property Located At 900 Brink Place because the criteria for meeting a variance request have been met, seconded by Board Member Smith.

Vote Tally: 5-0
Motion Passes

Item #5. A Variance Request To Allow Outdoor Sales Areas Associated With A Commercial Use To Be Located Behind The Building And On The Roof, And A Variance Request To Allow Outdoor Sales Areas To Not Be Limited To One-Half Of The Length Of The Front Building Facade, For The Property Located At 230 Franklin Road (F.Z.O. 5.2.7.K.1. and 5.2.7.K.2.).

Staff Report: Ariella Stanford. The subject property is located at 230 Franklin Road and is zoned PD Planned District. The property is also located within the Historic Preservation Overlay (HPO) and the Central Franklin Overlay (CFO). The existing buildings on the property make up The Factory at Franklin, which is a historically significant site containing various commercial uses. Building 1 at The Factory is a 2-story building that was built with the original factory in 1929, and has since hosted multiple restaurant uses. Building 1 is currently vacant, and the plan is to convert the building's use from restaurant to retail use. The proposed retail tenant plans to have outdoor sales, which the Zoning Ordinance requires to be located immediately adjacent to the front facade of the building and limited to no more than one-half of the length of the front building facade. There is currently a front patio that was previously used for restaurant seating, as well as parking spaces and sidewalks for pedestrian circulation in front of Building 1. In the rear area there is an existing concrete patio behind the building that was previously used for outdoor seating for restaurant uses, and an outdoor patio on the second floor that was also used for outdoor seating. The outdoor patio on the second floor has an area that is not covered at all, and an area that is covered but not enclosed. The applicant is proposing to use these areas on the roof, as well as the concrete patio on the ground floor for outdoor sales. To have outdoor sales in these areas, the applicant is requesting a variance to allow outdoor sales areas associated with a commercial use to be located behind the building and on the roof, and a variance to allow outdoor sales areas to not be limited to one-half of the length of the front building facade.

Staff Analysis – Request 1: To Allow Outdoor Sales Areas Associated With A Commercial Use To Be Located Behind The Building And On The Roof.

Criteria #1. The existing building has a covered front patio that runs along the entirety of the front facade of the building, and a sidewalk between the patio and the parking spaces in front of the building. While the existing patio space may be limited, the patio space was previously used for restaurant seating and would not impede pedestrian circulation if it were used for outdoor sales. Without justification for the inability to use the front patio for outdoor sales, Staff finds that it is feasible for outdoor sales to be located immediately adjacent to the front facade of the building. Staff finds this criteria is not met.

Criteria #2. The strict application of the Zoning Ordinance in this case would not result in exceptional hardship. Considering the existing front patio that could be used for outdoor sales without impeding pedestrian circulation or losing parking spaces, there would not be a hardship caused by locating the outdoor sales in the existing outdoor patio area in the front. Staff finds this criteria is not met.

Criteria #3. Staff find that having outdoor sales areas located behind the building and on the roof would not be a detriment to the public good or impair the intent of the ordinance in this case. The primary intent of

the ordinance in this case is to ensure that outdoor sales areas remain immediately adjacent to the main sales area and to maintain consistency with outdoor sales areas for aesthetic purposes. Given the unique layout of the existing building and outdoor patios, this request would not impair that intent. Building 1 faces Franklin Road with the rear facade (and existing patios) facing one of the main factory building entrances with a pedestrian walkway area between, so it would not look out of place for the outdoor sales areas to be facing this area. Additionally, the outdoor sales are proposed to be immediately adjacent to the building facade, so this request meets that intent. Staff finds this criteria is met.

Staff Analysis - Request 2: To Allow Outdoor Sales Areas To Not Be Limited To One-Half Of The Length Of The Front Building Façade.

Criteria #1. The existing building has a covered front patio that runs along the entirety of the front facade of the building, and a sidewalk between the patio and the parking spaces in front of the building. While the existing patio space may be limited, the patio space was previously used for restaurant seating and would not impede pedestrian circulation if it were used for outdoor sales. Without justification for the inability to use the front patio for outdoor sales, Staff finds that it is feasible for outdoor sales to be located on the existing front patio and limited to one-half the length of the front facade of the building. Staff finds this criteria is not met.

Criteria #2. The strict application of the Zoning Ordinance in this case would not result in exceptional hardship. Considering the existing front patio that could be used for outdoor sales without impeding pedestrian circulation or losing parking spaces, there would not be a hardship caused by having the outdoor sales located along one-half of the length of the front facade on that existing patio. Staff finds this criteria is not met

Criteria #3. Staff find that outdoor sales areas not limited to one-half of the length of the front building facade would not be a detriment to the public good or impair the intent of the ordinance in this case. The primary intent of the ordinance in this case is to ensure that outdoor sales areas do not dominate the front facade of commercial buildings and given the layout of the existing building and outdoor patios, this request would not impair that intent. With the proposed outdoor sales areas being in the rear area and partially on the second floor, these areas will not be seen from the front of the building or from Franklin Road. Staff finds this criteria is met.

RECOMMENDED MOTION: Staff recommends the Board of Zoning Appeals move to disapprove A Variance Request To Allow Outdoor Sales Areas Associated With A Commercial Use To Be Located Behind The Building And On The Roof, And disapprove A Variance Request To Allow Outdoor Sales Areas To Not Be Limited To One-Half Of The Length Of The Front Building Façade, For The Property Located At 230 Franklin Road, because the criteria for granting a variance have not all been met.

Applicant: Greg Gamble, representing the applicant, Holladay Properties. Mr. Gamble stated that the variance requests are being initiated because of a change of use from restaurant space to retail space. Mr. Gamble provided photographs to the Board. Mr. Gamble referred to the front of the building and noted that the awning would be removed along with the black railing and concrete columns to make way for a pedestrian path to the front door. On the next page, Mr. Gamble noted the deteriorating wood deck. Below the main level a cellar was recently discovered along with mold that is believed to be a result of stormwater going down the brick, through the foundation and into the cellar. Although there are no plans to use the cellar, the mold issue will need to be mitigated. The deck is proposed to be removed and the land area regraded between the building and sidewalk with landscaping to be installed.

Citizen Comments: None

Board Member Smith motioned to close the public comment, seconded by Board Member Fleishour.

Vote Tally: 5-0

Motion Passes

Chair Langley asked about the overall vision of the building and what retail sales would look like.

Mr. Gamble explained that outdoor sales might include lounge furniture and tables for outside living spaces or landscaping pots and urns. The retail tenant would be inside the building but have options for outdoor sales as discussed.

Board Member Smith asked staff about the intent of the ordinance and stated that the ordinance is more applicable to downtown Franklin and shopping centers where there isn't space in the rear for shopping. Also, Board Member Smith asked why the zoning ordinance limits outdoor sales to the front of the business.

Ms. Stanford stated that the intent of the zoning ordinance is to limit outdoor sales in the front of a building so that the front facade isn't dominated completely by outdoor sales. Outdoor sales have traditionally been limited to the front of a business and the zoning ordinance follows this tradition.

Chair Langley noted that the zoning ordinance regarding outdoor sales would apply to any retail business whether the business is in Cool Springs or in downtown Franklin or anywhere else in Franklin.

MOTION

Board Member Smith motioned to approve. A Variance Request To Allow Outdoor Sales Areas Associated With A Commercial Use To Be Located Behind The Building And On The Roof, And A Variance Request To Allow Outdoor Sales Areas To Not Be Limited To One-Half Of The Length Of The Front Building Facade, For The Property Located At 230 Franklin Road, seconded by Board Member Fleishour.

Board Member Smith stated that she believes the criteria for granting a variance request have been met and the intent of the zoning ordinance was not applicable in this scenario because there is a large amount of space at the back of the structure that is suitable for retail sales. The intent of the zoning ordinance is not to limit outdoor sales where appropriate space exists, as in this situation.

Chair Langley stated that the location and situation of the lot is unique and when considered within the context of the Factory and its many buildings, the motion to approve the variance requests can be supported.

Board Member Scales stated that the strict application of the zoning ordinance in this circumstance would limit what could be an excellent opportunity for outdoor sales. An undue hardship on the owner could occur and for these reasons, Board Member Scales stated that he feels the criteria for granting a variance have been met.

Ms. Diaz-Barriga asked for clarification of the motion and to include the full request of the applicant, including the roof and rear outdoor space.

Board Member Smith stated yes, indeed.

Vote Tally: 5-0
Motion Passes

Item #6. A Variance Request To Allow A Swimming Pool To Be Located A Minimum Of 1 Foot From The Rear Property Line, And A Variance Request To Allow A Retaining Wall To Be Located A Minimum Of 0 Inches From Any Lot Line For The Property Located At 1009 Fair Street (F.Z.O. 5.2.7.O. and 13.2.2.A.).

Staff Report: Ariella Stanford. The subject property is located at 1009 Fair Street and is zoned R-4 Residential District. The property is also located within the Historic Preservation Overlay (HPO) and the Central Franklin Overlay (CFO). There is an existing home on the lot, and there is an accessory structure that has received approval from the Historic Zoning Commission to have major rework done. The accessory structure was originally located right at the rear and side property lines, and will be at that same location when it is finished. The existing home is located approximately 55 feet from the front lot line, and about 15 feet from the rear property line, so it is situated towards the back of the property. Due to the location of the existing house, the space in the backyard is limited. The homeowner is proposing a 9 by 21-foot swimming pool in the backyard and, due to the slope in the backyard, a 2-foot retaining wall would be necessary to level the backyard for the pool. The proposed retaining wall would abut the rear and side property lines with a 0-foot setback, and the pool would be located adjacent to the retaining wall with a 1-foot setback from the rear lot line. A 2-foot retaining wall is required to be located at least 5 feet from any property line, and swimming pools are required to be located at least 5 feet from any property line. Seeing as the proposed retaining wall and swimming pool do not meet the Zoning Ordinance setback requirements, the applicant is requesting a variance to allow a swimming pool to be located a minimum of 1 foot from the rear property line, and a variance to allow a retaining wall to be located a minimum of 0 inches from any lot line.

Staff would also like to note that the property received approval from Historic Preservation Staff for a 7-foot tall fence in the backyard, but they did not receive approval for a retaining wall in the backyard, so if the retaining wall request is approved, they will need to get approval for the wall from Historic Preservation Staff.

Staff Analysis – Request 1: To Allow A Swimming Pool To Be Located A Minimum Of 1 Foot From The Rear Property Line.

Criteria #1. The existing house is located uniquely towards the rear of the property, which leaves very limited space in the backyard. Given the limited space in the backyard, this property would not be able to accommodate a reasonably sized swimming pool within the Zoning Ordinance requirements. With the rear lot line being about 15 feet from the rear facade of the house, and the setback for the swimming pool being 5 feet, there is only 10 feet of backyard space for a swimming pool. That does not leave enough room for the necessary retaining wall, the pool, and the necessary space between the house and the pool. Staff finds this criteria is met.

Criteria #2. The strict application of the Zoning Ordinance results in a backyard space too small to fit a reasonably sized swimming pool. With the rear lot line being about 15 feet from the rear facade of the house, and the setback for the swimming pool being 5 feet, there is only 10 feet of backyard space for a swimming pool. The setback regulation creates a backyard space too small to install a reasonably sized swimming pool. Staff finds this criteria is met.

Criteria #3. Staff finds that this request would not be a substantial detriment to the public good and would not substantially impair the purpose and intent of the Zoning Ordinance. The intent of this ordinance is to provide space between pools and neighboring properties as a small buffer for noise and pool activities. The owner is proposing a 5-foot fence on top of the 2-foot retaining wall to provide privacy and a barrier between the properties. This meets the intent of the ordinance and ensures that the swimming pool won't be a detriment to the neighboring properties. Staff finds this criteria is met.

Staff Analysis - Request 2: To Allow A Retaining Wall To Be Located A Minimum Of 0 Inches From Any Lot Line.

Criteria #1. The existing house is located uniquely towards the rear of the property, which leaves very limited space in the backyard. Given the limited space in the backyard, this property would not be able to

accommodate a reasonably sized swimming pool. If the retaining wall were to be located within the required setbacks, there would not be enough space for the swimming pool. For this reason, to be able to put a pool in the backyard, the retaining wall is not able to comply with the Zoning Ordinance regulations. Staff finds this criteria is met, with the condition that Request 1 meets the criteria for granting a Variance.

Criteria #2. The strict application of the Zoning Ordinance would prevent a retaining wall to level the backyard space from being located far enough from the existing house to allow for a reasonably sized swimming pool in this case. If the retaining wall were to be located within the required setbacks, there would not be enough space for the swimming pool. For this reason, to be able to put a pool in the backyard, the retaining wall is not able to comply with the Zoning Ordinance regulations. Staff finds this criteria is met, with the condition that Request 1 meets the criteria for granting a Variance.

Criteria #3. Staff finds that this request would not be a substantial detriment to the public good and would not substantially impair the purpose and intent of the Zoning Ordinance. The intent of this ordinance is to ensure that if a retaining wall were to collapse, it would not collapse onto the neighbor's property, and to ensure that it wouldn't negatively impact stormwater flow between properties. The retaining wall would be holding back ground that slopes up from this property to the neighbor's property behind, so if the wall were to collapse it would collapse in on the owner's property, and it wouldn't be visible from the neighbor's property behind. The retaining wall will also encourage stormwater to travel to the existing catch basin that will collect the stormwater, and it will exit at the front of the property. Additionally, the retaining wall is proposed to have a fence on top of the wall, which will provide privacy between the properties. Staff finds this criteria is met.

RECOMMENDED MOTION: Staff recommends the Board of Zoning Appeals move to approve the Variance Request To Allow A Swimming Pool To Be Located A Minimum Of 1 Foot From The Rear Property Line, and approve the Variance Request To Allow A Retaining Wall To Be Located A Minimum Of 0 Inches From Any Lot Line (with the condition that request 1 is approved) For The Property Located At 1009 Fair Street, because the criteria for granting a variance have been met.

Applicant: Patrick Ogle, owner. Mr. Ogle stated that the site has required redesign including stormwater design updates and has been an ongoing two- and half-year project. From the standpoint of the variances that have been requested, it is Mr. Ogle's understanding that the wall and pool are within the requirements of the zoning ordinance and the matter to be considered is the location. Several homes within the Hincheyville Historic District have significant setbacks from the road and because of this there is only about 41% of usable space in the backyard. Because the home is a single story, Mr. Ogle explained that there is no ability to build up, behind or on the sides of the home. The only other usable space is on the entire lot, is the rear of the yard. The carriage house is sitting on two zero lot lines and the fence has been before the HZC several times. The retaining wall being requested will lie on the property owner's side, not on adjacent property. Many neighbors present are concerned about stormwater drainage which the retaining wall has addressed along with the ongoing stormwater drainage mitigation. Regarding the pool location, the proposed location would allow for a better traffic flow from the carriage house and driveway into the rear entrance of the home, otherwise one would need to circle around the pool to enter the home.

Citizen Comments:

Todd Kelly, 1012 West Main Street. Mr. Kelly stated that his concerns regarding this project include the lack of a buffer area that would filter the noise. Pool use can be noisy and loud and with the closeness of the pool to the lot lines, can only increase the level of noise. Mr. Kelly noted that he opposes the approval of the variance requests.

Roger Jones, 1002 West Main Street. Mr. Jones stated that he has concerns about how the pool will impact neighbors who live behind the subject property. Also, Mr. Jones is concerned about the precedent that will be set if the variance requests are approved. If the variances are approved, the setbacks and requirements for a variance request are meaningless. Mr. Jones noted that the staff report doesn't find anything unique about the property and that approving the variance is not in the best interest of the public.

Harriet Harms, 1010 West Main Street. Ms. Harms stated that her property lies directly behind the subject property and fronts West Main Street. West Main Street is a heavily travelled road with cars, motorcycles, construction trucks and emergency vehicles. Ms. Harms noted that the peace and quiet of her backyard is a respite from her front porch and the traffic congestion of West Main Street. According to Ms. Harms, if the variance requests are approved, the city will be ignoring its own rules, and her property and other surrounding properties will be devalued. Ms. Harms respectfully requested the BZA enforce its rules.

Kim Hamner, 1007 Fair Street. Ms. Hamner stated that she lives adjacent to the subject property and is concerned about potential flooding in the future. Currently, Ms. Hamner's property has never experienced flooding after substantial rainfall. However, with the proposed installation of the retaining wall, she is concerned that her property might now be susceptible to flooding.

Board Member Scales motioned to close the public comment, seconded by Board Member Boehms.

Vote Tally: 5-0
Motion Passes

Board Member Smith asked if the pool would require approval from the HZC.

Ms. Stanford stated that the retaining wall is the only part requiring approval from the HZC.

Chair Langley asked for more information about the fencing and if staff would address the stormwater drainage design.

Ms. McCoy stated that given the close parameters of the lot, a survey will be required as well as a review from the engineering department.

Ms. Stanford stated that a seven-foot fence has been approved by the Historic Zoning Commission, but the applicant would be required to receive approval of the retaining wall.

Board Member Fleishour stated that pool equipment improvements ensure a quitter pump and filtration system. The applicant could be required to install a high-end filtration system with low decibel sound continuation as a condition of approval.

MOTION (to approve)

Board Member Fleishour motioned to approve A Variance Request To Allow A Swimming Pool To Be Located A Minimum Of 1 Foot From The Rear Property Line, And A Variance Request To Allow A Retaining Wall To Be Located A Minimum Of 0 Inches From Any Lot Line For The Property Located At 1009 Fair Street with the condition that the applicant install a high end low decibel filtration system.

The motion fails for lack of a second.

Mr. Squires stated that more information is needed about how to determine if a pool filtration system is considered low decibel sound continuation. The concern is that if the application is approved, staff will be faced with ensuring the correct low decibel system is installed. Mr. Squires asked what constitutes a low decibel system, how low is low and is that a defined term of art that staff will know to recognize.

Board Member Fleishour stated that a high-end quiet filtration system would be sufficient and should guarantee a quiet filtration system.

Chair Langley stated that the motion leaves a lot of discretion for staff to determine. A quiet sounding filtration system for one person may be considered a noisy system by another person. If the decibel level was known, it may be more reasonable to consider this type of filtration system. Chair Langley asked Mr. Fleishour if he would like to re-word or clarify the motion.

Board Member Scales suggested deferring the application to the next voting meeting to allow time for clarification of what a low decibel filtration system is.

MOTION (to defer)

Board Member Scales motioned to defer the application to the next voting meeting, June 5th BZA meeting, seconded by Board Member Bohems.

Board Member Fleishour stated that the location of the filtration system should be approved, and it should not be located at the back of the property.

Chair Langley stated that he has concerns about the location of the pool and the extent of the hardscapes proposed.

Board Member Smith noted that the five-foot buffer requirement is not being met as required by the zoning ordinance and there does not seem to be a justification for why the buffer requirement is not being met.

Board Member Bohems agreed with Board Member Smith and stated that the requirements of the zoning ordinance are there for a reason. Also, the applicant could consider other pool designs that may be more appropriate for the size of the backyard.

Vote Tally: 2-3 (Board Members Langley, Scales and Smith voting against)
Motion Fails

Chair Langley asked for another motion from the Board.

MOTION (to disapprove)

Board Member Scales motioned to disapprove A Variance Request To Allow A Swimming Pool To Be Located A Minimum Of 1 Foot From The Rear Property Line, And A Variance Request To Allow A Retaining Wall To Be Located A Minimum Of 0 Inches From Any Lot Line For The Property Located At 1009 Fair Street because the criteria for granting a variance request have not been met, seconded by Board Member Smith.

Board Member Scales stated that after discussing the variance requests, given the site plan, it's difficult to understand how to appropriately accommodate the variance requests. There are concerns about the omission

of the five-foot buffer along with concerns about stormwater runoff because of the proposed hardscape installation.

Chair Langley agreed with Board Member Scales about the stormwater runoff and suggested more research/study and design to accurately understand how and where stormwater will flow for the subject property and adjacent properties.

Vote Tally: 4-1 (Board Member Fleishour voting against.

Motion Passes

ADJOURNMENT

Board Member Smith motioned to adjourn the May 1, 2025, BZA Meeting, seconded by Board Member Scales.

Vote Tally: 5-0

Motion Passes.



6/5/25