

**MEETING MINUTES OF THE
FRANKLIN BOARD OF ZONING APPEALS
January 9, 2020**

The Franklin Board of Zoning Appeals held a regular meeting on Thursday, January 9, 2020 at 6:00 p.m. in the City Hall Boardroom.

Members present: Frank Jones
Jeff Fleishour
Jonathan Langley
Gillian Fischbach

Staff present: Kelly Dannenfelser, Planning & Sustainability Department
Kelli Gibson, Planning & Sustainability Department
Bill Squire, Assistant City Attorney
Alex Bearden, Building and Neighborhood Services Department

The agenda read as follows:

Election of Chair and Vice Chair.

Mr. Fleishour moved to nominate Mr. Frank Jones to the 2020 Chair. Ms. Fischbach seconded the motion and the motion carried.

Ms. Fischbach moved to nominate Mr. Jonathan Langley as Vice-Chair. Mr. Fleishour seconded the motion and the motion carried.

Announcements

Chair Jones requested to know if there were any announcements.

Ms. Gibson stated there was a typo on the 2020 Deadlines and Meeting Schedule, with March 9th being the deadline and not March 19.

Review and approval of Minutes from December 5, 2019, BZA Meeting

Mr. Langley moved to approve the meeting minutes for December 2019. Mr. Fleishour seconded the motion and the motion carried 4-0.

Variance Request by Ralph Knauss, for a 0.50-foot encroachment into the required 25-foot rear yard setback and a 0.30-foot encroachment into the required 15-foot side yard setback for the commercial building located at 5070 Carothers Parkway (F.Z.O §3.3.3, Table 3-7 and §3.3.4, Table 3-8).

Ms. Gibson stated the applicant is requesting a 0.50-foot encroachment into the required 25-foot rear yard setback and a 0.30-foot encroachment into the required 15-foot side yard setback for a recently constructed commercial building at 5070 Carothers Parkway. Ms. Gibson stated

conventional standards were applied to this development for site standards and final plat. Ms. Gibson stated construction methods influenced by the property's unusual characteristics resulted in inadvertent encroachments of less than six inches into the rear yard and side yard setbacks. Ms. Gibson stated the applicant is requesting a variance because the two encroachments cloud marketable title to the property by creating a title exception for which a future buyer would not be able to secure title insurance. Ms. Gibson stated the subject property is lot 5 in the Carothers Crossing East Subdivision. Ms. Gibson stated the property is currently zoned GC – General Commercial District, with a MECO-4 Character Overlay, and designated as suitable for either Traditional or Conventional Development Standards. Ms. Gibson stated the required rear yard setback is 25 feet and the required side yard setback is 15 feet. Ms. Gibson stated the applicant has constructed a new commercial building and has provided a Preliminary ALTA/ACSM Land Title Survey by SEC, Inc., dated 10-08-2019 and concept plans showing the encroachments into the side and rear setbacks. Ms. Gibson stated a 52-foot access easement, a five-foot drainage easement, a 20-foot sanitary sewer easement, and a 50-foot landscape buffer are located on the property. Ms. Gibson stated the non-rectangular shape of the lot and unusual topographic conditions likely influenced the construction methods applied to the property. Ms. Gibson stated the brick base, not the walls, is the only portion of the building encroaching into the setbacks. Ms. Gibson stated the applied methods may have contributed to the minor encroachments. Ms. Gibson stated the Variance process is intended to provide limited relief from the requirements of the Zoning Ordinance in those cases where the strict application of a particular requirement will create an unnecessary hardship prohibiting the use of land in a manner otherwise allowed under the Ordinance. Ms. Gibson stated it is not intended that Variances be granted merely to remove inconveniences or financial burdens that the requirements of the Zoning Ordinance may impose on property owners in general. Ms. Gibson stated that Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission.

Ms. Gibson stated BZA may authorize, upon an appeal relating to the property, a Variance from such strict application of the Zoning Ordinance so as to relieve such difficulties or hardship only in accordance with the following three standards (FZA §§ 2.2.4 (b) and 2.4.5):

1. Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of this ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property is not able to accommodate development as required under this ordinance; and
2. The strict application of any provision enacted under this ordinance would result in peculiar and exceptional practical difficulties to or exception or undue hardship upon the owner of such property; and
3. Relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning map and this ordinance.

Ms. Gibson stated in order to grant the Variance Request, the BZA must determine that the applicant has demonstrated that all three standards required to grant the variance have been satisfied. Ms. Gibson stated the following is an analysis of the requested variance as it relates to the variance standards and approval criteria described above:

1. Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of this ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property is not able to accommodate development as required under this ordinance.
 - The property has a small building envelope due to multiple easements and there is a significant grade that creates exceptional and extraordinary topographic conditions. According to the applicant, the building was built into the side of an existing graded hillside with a 3:1 slope. As a result, the eastern perimeter wall and the northern perimeter wall were built as concrete retaining walls (stemwalls). The construction method for these stemwalls is the likely cause of the inadvertent side and rear setback encroachments, both of which are less than six inches. Only the brick base of the building, not the walls themselves, encroaches into the side and rear setbacks.
 - Staff finds that the topographic conditions on the lot, as described by the applicant, create a unique, exceptional, or extraordinary situation on the subject property that would prevent the applicant from complying with the requirements of the Zoning Ordinance if Conventional Development Standards were applied.
2. The strict application of any provision enacted under this ordinance would result in peculiar and exceptional practical difficulties to or exception or undue hardship upon the owner of such property.
 - The strict application of the Zoning Ordinance provisions requiring conformance with the Conventional Development Standards would result in an exceptional hardship on the owner of the property because conformance would require removal of a portion of the building. Ultimately, the Board must determine whether the inability to bring the building into conformance with the provisions of the Zoning Ordinance is a hardship or practical difficulty.
3. Relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning map and this ordinance.
 - The final standard the Board must consider is whether the requested relief granted would be a detriment to the public good or impair the intent and purpose of the Zoning Ordinance. Based on similar variance requests granted by the BZA and the minor nature of the side and rear setback encroachments, staff believes that granting the proposed variance would not be detrimental to the public good and would not impair the intent or purpose of the Zoning Ordinance.

Ms. Gibson stated in order for the BZA to grant a variance, the applicant must have demonstrated that all three of the standards required to grant a variance have been satisfied. Ms. Gibson stated based on the analysis presented above, staff recommends approval of the variance requested by the applicant because the applicant has met all three of the standards required for granting a variance.

Mr. Knauss introduced himself. Mr. Knauss stated he added an aerial photo with his application and brought visual aids tonight, which he showed to the commissioners. Mr. Knauss stated the aerial was a two-scale size and pointed out the Northeast corner of the building and the Northwest corner.

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

Mr. Langley moved to close the public portion of the meeting. Ms. Fischbach seconded the motion and the motion carried 4-0.

Mr. Fleishour moved to approve the variance request to vary the required 25-foot rear setback by 0.50 feet and the required 15-foot side setback by 0.30 feet for the commercial building located at 5070 Carothers Parkway because the applicant has demonstrated that the standards for granting a variance have been satisfied as described in the staff report. Mr. Langley seconded the motion and the motion carried 4-0.

Other Business.

No other business.

Adjourn.

With there being no further business, the meeting was adjourned at 6:10.

Chair