

**VILLAGE OF FRANKLIN
ZONING BOARD OF APPEALS**

**Minutes of Meeting
October 18, 2012**

I. CALLED TO ORDER

The Regular Meeting of the Zoning Board of Appeals (ZBA) was called to order by J. Haley, at the Franklin Village Hall, Franklin, Michigan at 7:30 PM.

II. ROLL CALL

Present: Randy Brakeman, Bill Couger, Sam Dabich, J. Hailey, Dean Moenck, Harold Stein, Joe Roisman (arrived at 7:37pm)

Also Present: Bill Dinnan, Building Official; Amy Sullivan, Village Administrator; Eileen Pulker, Village Clerk

III. ADOPTION OF AGENDA

Motion by Hailey, supported by Brakeman to approve the Agenda for the October 18, 2012 regular ZBA meeting as presented and published.

Ayes: Brakeman, Couger, Dabich, Hailey, Moenck, Stein

Nays: None

Absent: Roisman

Motion carried.

Hailey explained the process of how the meeting would be conducted.

IV. NEW BUSINESS

A. Case: #12-07

Appellant: Dan and Elina Costello

Property: In the rear of 32749 Franklin Road

Parcel ID: 24 06 203 019

Zoning: C-1

Description of Proposed Request:

The Appellant is requesting the ZBA to grant variances for the following:

1. An additional 4 parking space variance which does not comply with Franklin Village Ordinance Section 1262.01 (o), the Table of Off-Street Parking requirements.

Amy Sullivan, Administrator, gave a general background of the project. She stated that these 2 variances are with regards to the Parking Ordinance, which is out-of-date, and we think this would be a faster route than the long 5-6 month ordinance amendment process.

She continued by giving a brief overview of the rehab of the Costello barn behind the Zieban Mare and Smile Builders Building. Council has approved the re-zoning of that particular part of the property from parking to commercial. They have amended the Zoning Ordinance to allow mixed-use on the 2nd floor of commercial buildings. The HDC has also approved the project contingent upon the variances being granted.

Building Official Bill Dinnan presented the case to the ZBA and clarified the 2 variances the appellants are requesting. Dinnan explained that "4" is the total spaces they are seeking for the whole site, 2 of which would be the carport or garage because this is also residential. Dinnan reminded the Board that a parking space variance had been previously granted in 2004.

Moenck questioned if the spot underneath the deck would be classified as a carport and thus would be counted as residential. Dinnan explained that at the moment it is part of the total count.

Brakeman asked for a brief explanation of the variances that had been granted previously. Dinnan explained that in 2004 the barn was not included in the space count but with its change in usage it is required to have parking spaces allocated, 2 for residential and 2 for retail.

Hailey asked about the required “green belt” which is in the Ordinance. Dinnan explained that screening is required and can be done as a brick wall or landscaping.

Dan Costello, owner of the Smile Builders Building and the barn behind it, explained the original variance was because they were renovating the building and providing for handicap access. Costello explained the traffic flow and the parking situation for both his building and the barn. He mentioned that there are two spaces on the north side of the barn that, although not on the drawings, are used every day. Costello further opined that there would not be a lot of traffic with the small studio apartment and the small retail area in the barn. Costello added that the site plan has the approval of the tenant downstairs (Zieban Mare) and the approval of Dr. Costello who is the tenant upstairs.

Bill Finnicum, Finnicum Brownlee Architects, the project architect for the conversion of the historic barn into retail space with residential above. Finnicum stated that there are a number of practical hardships, noting that it is an historic resource, as it sits right now it is only used for storage and is a burden for the owner because the owner is caring for it and is not able to get any revenue or rent for the space. Finnicum added that because the Parking Ordinance is for single family homes and the barn will be a studio apartment, the parking space count should be reduced accordingly. Finnicum provided a calculation of parking spaces necessary (12) based on the proposed parking regulations that are due to be revised by the Planning Commission, adding that there are 15 usable spaces on the site. Finnicum opined that the timing is a hardship because they need to be able to move forward with the project and not wait the additional 5 – 6 months for the ordinance review.

Finnicum pointed out and explained the 3-week parking study conducted by Mr. Costello which illustrates how the lot functions with its current needs. Finnicum added that another consideration is the fluctuation of timing; when the resident would be leaving in the morning and returning in the evening and the business parking needs. Finnicum opined that there would be no competition for the spots within the lot and that “...mixed-use parking is different than straight residential parking or straight commercial parking.”

Other hardships include: The location of the barn which makes the parking configuration difficult and less efficient. The historic barn cannot be relocated because it is fragile. To relocate it somewhere else on the site is not historically appropriate either. The lot as it exists now is too small to build a carport or garage because it would take away parking spaces. The barn pre-exists the Ordinance.

Costello said there is a green space at the back of the property which works as screening from the neighbors, and explained about the shared parking with the building next door, thus helping with any overflow. Costello further noted that Dr. Costello’s dental practice is not a high volume one; it is a clinic and therefore requires low parking usage.

Moenck questioned the origin of the proposed parking figures used in the future ordinance calculations.

Finnicum mentioned the parking study that was completed by a committee chaired by Calvin Cupidore with himself, Amy Sullivan, Vivian Carmody, Gary Roberts, and Chris Doozan from McKenna Associates, which found that Franklin has adequate parking if looked at globally.

Roisman stated that if they don't get a variance, they won't get any revenue because the barn could only be used for storage, thus making this a financial hardship.

Public Comments:

The Village Clerk indicated that the Village Office received 4 emails from residents – 2 in favor-Pat Burke and Lew Eads, Bjorn and Trang Mader and 2 opposed-Suzanne McClow and Bill Lamott.

Roger McClow, Franklin Road, stated that he felt that the process is upside down. The Costello's shouldn't be here after they have gotten approvals and the applicants should have been before the Zoning Board of Appeals before hand to figure out whether or not it is feasible to do the project as proposed. McClow stated that he is opposed to any variance for a couple of reasons: 1. The Ordinance that is in effect at this point of time has to be followed by the ZBA. 2. Taking into account the previous variance of 8 spaces which was granted in 2004, if this variance were to be granted the Costello's would only have about 52% of the required parking for their building and barn. McClow added that the hardship is that they have gone ahead and created a situation where they now need these parking spaces and this has to be within the context of the ordinances that exist. The ordinances are very important in the way they are written.

Vic Cestar, Franklin Road, stated that he is a developer and mentioned receiving a letter in which Sullivan summarized this project very nicely. It also states that there is a grant available for the project but there is a caveat. The caveat being that before any money is awarded there must be a commitment of taxpayers' money. To him this makes it into a public project. He wanted the Zoning Board of Appeals to be aware of this as it deliberates on its decision.

Al Beke, Colony Hill, stated that the applicant recently requested the property be re-zoned commercial and going into the developing process, the applicant knew what the physical limitations of the property are, as well as the zoning ordinance limitations. Beke added that the applicant had made several comments on the proposal that the parking ordinance is being revised and stated that 1. The Planning Commission has never seen publically anything that was presented today with regards to numbers; 2. The process of revising ordinances takes longer than a 6 month period if it were on the docket; 3. The parking study that was done by the proponent was very unscientific as was the parking study that suggested there was sufficient parking within the Village itself. Beke opined that when the parking study was presented to the Planning Commission it was passed through without any recommendations to the Village Council. Beke added that the Planning Commission did not make any concessions that it was valid because it had been very unscientific in many respects. Beke further stated that in regards to the parking for the residential portion of this proposal, the category of the renter is unknown, but in today's society a couple has 2 cars and in as much as the village does not have all the amenities so residents must shop elsewhere, therefore, it becomes a necessity to have a vehicle or vehicles. Beke added that the question of off- hour residential parking is an unknown factor.

Matthies Mayer, Franklin Road, questioned if the discussion tonight was all theoretical and noted that he and his family support Franklin businesses. Mayer noted that he is a client of Smile Builders dental office and when he has gone to the dentist he has never had any problem finding a parking space in the lot nor has seen any problem in the parking lot. Mayer further added that he supports the re-use of the property and Finnicum's work on the barn.

Judy Meade, Captains Lane, asked if there were any other apartments in the Village and if so, what are the parking requirements and if all other residences are required to have a garage, is this property asking for an exception to that requirement. Dinnan pointed out that although there are no apartments in the Village in Ordinance Sections 14 and 15, single family dwellings and residential/terrace dwellings. Meade opined that overall, she agrees with Mr. McClow's statements and is opposed to granting the variances under the existing Ordinances.

Hailey closed the Public Comments.

In response to what Beke said, Finnicum commented that the old Planning standards are designed for the maximum parking and don't take into account the reality of parking needs adding that the trend nationwide is to roll it back. Finnicum noted that if the applicant does not prevail tonight, they will have to wait for the whim or will of the Planning Commission to take this matter up in the future, which in itself can be considered a hardship.

Dabich stated that he was unfamiliar with the grant and its ramifications. Costello gave a brief outline of it and informed the Zoning Board of Appeals that the Village Council approved a local commitment towards this project.

Moenck asked Dinnan to explain what type of parking variances were granted to the Kreger House and how they are administered.

Roisman identified himself as a member of Main Street Franklin and said that he was trying to look at this issue objectively, and that as a practical matter he thinks this would not only improve the downtown area but it would also generate taxes. He believes that if we interpret this as strictly black and white and don't think of the future, we're not being realistic and might prevent other people from moving in.

Dabich commented that we have rules and laws we must abide by and one of our rules is "practical hardship". Dabich added that when Costello came to the Zoning Board of Appeals (ZBA) in 2004, the Board understood the need for parking and the need to improve the condition so that Dr. Costello could operate a successful dental office and business below. Dabich opined that this is for financial gain and he didn't think the ZBA should be involved in it and that if the rules change then he would be all for it, but right now the ZBA has required other applicants to stick to the Village's rules and the ZBA members have been strict on that.

The Zoning Board of Appeals made the following Findings of Facts with respect to the request for a variance for an additional 4 parking spaces, subject to the Ordinance as stated by the Building Official.

1. Case #12-07, In the rear of 32749 Franklin Road, Parcel ID: 24 06 203 019, Zoning: C1
2. Appellant (Dan and Elina Costello) are requesting a variance for an additional 4 parking spaces which does not comply with the Franklin Village Ordinance Section 1262.01 (o), the Table of Off-Street Parking requirements.
3. Historic District Commission (HDC) has approved the project subject to the approval of the ZBA.
4. In 2004 the applicant came before the ZBA, requested and received approval for a variance of 8 parking spaces.
5. There are no nearby properties to borrow or share parking spaces with or borrow spaces from.
6. The ZBA is bounded by the current Parking Ordinance not the proposed one.

7. Chris Doozan, Village Planner with McKenna Associates, clarified that the 2004 ZBA Application was incorrect in that it stated that the Zoning requirement was 21 spaces which in fact it did not include the barn as part of the calculations.
8. The property houses a historic barn that is the middle of the parking lot area.
9. The historic barn in its current location is too fragile to move.
10. The Village received 4 letters from Village Residents– 2 letters signed by 2 people in favor of granting the variance and 2 letters opposed to the granting of the variance.
11. There were 5 speakers tonight- 1 in favor of granting the variance and 4 opposed to granting the variance.
12. The lot is too small to build a garage or carport.
13. Two of the spots of the requested variance are for the proposed residence and they are based on the typical single family residence classification, whereas this is a 400 sq. foot apartment, thus a smaller facility than what would normally drive the parking requirement.
14. There is an easement to share parking with an adjoining lot.
15. There are actions on-going to make changes to the Ordinances but those have not yet gone through the process thus have not been approved.
16. The 2nd floor of the property is a dental practice which normally has a smaller number of patients per office visit than the other commercial usage.

Motion by Hailey, supported by Brakeman, that each member of the ZBA consider the proposed Findings of Fact, and if you believe a decision regarding this variance request should be made using the above Findings of Fact indicate this by saying "aye" and if you do not believe that the proposed Findings of Fact are appropriate for making a decision you should vote "nay".

Ayes: Brakeman, Couger, Hailey, Moenck, Roisman, Stein

Nays: Dabich

Absent: None

Motion carried.

Motion by Hailey, supported by Couger, that each member of the ZBA, using the approved Findings of Fact, consider the facts, and if you believe the facts warrant approval of the Appellant's request for the variance for the installation of a chain link pool fence, one should vote "aye" and if one does not believe the facts support the variance one should vote "nay".

Ayes: Moenck, Roisman

Nays: Brakeman, Couger, Dabich, Hailey, Stein

Absent: None

Motion is defeated. Variance is not granted.

Hailey asked the applicant if he wanted to withdraw the application for item B. Costello answered in the negative.

B. Case: #12-07

Appellant: Dan & Elina Costello

Property: In the rear of 32749 Franklin Road

Parcel ID: 24 06 223 019

Zoning: C-1
Description of Proposed Request:

The appellant is requesting that the ZBA grant a variance for following:

2. To allow for the parking (two spaces required) for a single family dwelling that is not in an enclosed garage or carport which does not comply with the Franklin Village Ordinance Section 1262.01 (d), Location of Parking Spaces for Single-Family Dwellings.

Hailey asked the Board if there are other facts that should be included with those presented for the 1st variance.

The ZBA made the following Findings of Facts with respect to the request for a variance to allow for the parking (two spaces required) for a single family dwelling that is not in an enclosed garage or carport as stated below which will require a variance subject to the Ordinance as stated by the Building Official:

1. This is an historic barn with the residential space in question is on the 2nd floor of the barn and is approximately 400 sq. ft. in total area. The lower part of the barn is proposed for commercial.
2. There are single residential properties in the Village without carports and garages which are legally non-conforming because they pre-date the Ordinance and were “grandfathered” in. Dinnan clarified that the Ordinance is for “new uses and buildings”. The barn was a storage building and now it is changing its uses, from 1st floor into retail and 2nd floor into residential.
3. There is no other place on the property to put a garage or carport without disrupting other parking that has been approved.
4. By adding a carport or garage to an historic structure would be changing the historic nature of that building.

Motion by Hailey, supported by Moenck, that each member of the ZBA consider the proposed Findings of Fact, and if you believe a decision regarding this variance request should be made using the above Findings of Fact indicate this by saying "aye" and if you do not believe that the proposed Findings of Fact are appropriate for making a decision you should vote "nay".

Ayes: Brakeman, Couger, Dabich, Hailey, Moenck, Roisman, Stein

Nays: None

Absent: None

Motion carried.

Motion by Hailey, supported by Couger, that each member of the ZBA, using the approved Findings of Fact, consider the facts, and if you believe the facts warrant approval of the Appellant’s request for the variance to allow for the parking (two spaces) for a single family dwelling that is not in an enclosed garage or carport, one should vote "aye" and if one does not believe the facts support the variance one should vote "nay".

Ayes: Couger, Dabich, Hailey, Moenck, Roisman, Stein

Nays: Brakeman

Absent: None

Motion carried. Variance is granted.

V. APPROVAL OF MINUTES: SEPTEMBER 20, 2012

Moenck pointed out that on pg. 1, last paragraph, it should read "...stated that he sub-contracted out for the pool fence."

Motion by Hailey, supported by Moenck, to approve the amended minutes of the regular ZBA meeting of September 20, 2012 as submitted.

Ayes: Brakeman, Couger, Dabich, Hailey, Moenck, Roisman, Stein

Nays: None

Absent: None

Motion carried.

VI. ADJOURNMENT

There being no further business, by unanimous agreement, the meeting adjourned at 9:17 P.M.

Respectfully submitted,

Gail Beke, Recording Secretary

Eileen H. Pulker, Clerk