

CITY OF FRANKFORT

Board of Zoning Appeals

September 14, 2022

The City of Frankfort Board of Zoning Appeals met at a Regular Meeting on September 14, 2022 in the City Council Chambers, 301 E Clinton St, Frankfort, IN at 5:30 PM.

President Hussey noted that if anyone is present to speak for or against the petitions being heard tonight, they must sign in. Any person signed in will receive three minutes each and asks that comments be kept respectful.

President David Hussey was present and called the meeting to order. Upon roll call, the following members were present: Sam Payne, Kevin Myers and Mike Nichols. Not present: Isac Chavez. Staff members present: Don Stock (Zoning Administrator) and Ashlee Bassett (Administrative Assistant).

President Hussey asks the board if there is any conflict of interest present or if any ex-parte contact has taken place. Hearing none from the board, he proceeds with the special meeting.

MINUTES: Minutes of the August 31, 2022 regular meeting were presented for review.

Motion: Approve minutes as presented.

Motion made by: Kevin Myers

Second: Sam Payne

Roll Call:

- Yay- Sam Payne, Kevin Myers, Mike Nichols, David Hussey

NEW BUSINESS: President Hussey opened the public hearing for Docket# BZA-2022-013 (Variance of Developmental Standards) for Adam Volpe. Adam & Lora Wellman (girlfriend) are present to represent petition. President Hussey calls on Don Stock to present staff report. Don Stock notes that petitioner has prepared their own staff report and calls on Adam to present it to the board. Adam Volpe read his staff report in its entirety. President Hussey notes that there are pictures attached to the staff report. Lora Wellman notes that the photos represent vehicles that don't even belong to the neighbors, they are just people that use their driveway at their own discretion. Sam Payne clarifies that none of these vehicles pictured belong to them. Lora says no. They have offered the neighbors use of their driveway before to continue cleaning up their property. Lora also notes that law enforcement has been involved multiple times. Sam Payne asks where the fence will be installed. Adam Volpe notes that it will be installed nearest the Northern property line, parallel to the driveway. Approximately 250'. Mike Nichols asks if the driveway pictured is Mr. Volpe's. Adam says yes. He provides photos from his security cameras, mounted to his workshop. Kevin Myers asks if the neighbor will have any access to his rear yard. Adam Volpe says that the fence will be set back to allow them access to their rear yard. Mike Nichols asks about the fence height in the front. Adam Volpe says that the fence height in the front has been discussed with Don Stock. Mike Nichols clarifies that Adam mentioned in the staff report that a neighbor already has an 8' fence. Adam Volpe says yes the neighbor to the South has an 8' fence. Sam Payne asks if this will be chain link. Adam Volpe says it will be pressure treated wood privacy fence. Mike Nichols asks if the fence will be inside the property line. Adam says yes, out of concession to the neighbor, so that he's still able to pass his vehicles through there.

President Hussey calls for any further discussion. Sam Payne says he feels it's a shame that he needs to come to the BZA for a fence to shield himself from the junk yard next door. He feels that the neighbors should be made to clean up their property; Don Stock notes that he will need to speak with Code Enforcement. Lora Wellman says there are people living in sheds and campers in the backyard and they burn trash constantly. She says she used to work in corrections at the Sheriff's Office and is familiar with some of the people that frequent the property. She says that there are violent felons with drug addiction problems. She states she has a five year old that she doesn't feel comfortable allowing her to play outside. There have been charges of criminal trespassing against them. She notes that there have been many occasions where she has been yelled at or blocked and unable to enter her own driveway. Lora also notes that there is a lot of junk that she feels they can live with, but all the extra people walking through her yard is unacceptable. Sam Payne notes that he has taken them to court before and sometimes they will clean up the junk but it comes right back. Some discussion was had regarding Code Enforcement and why the problem is still occurring.

Sam Payne asks why neighbor was opposed to the fence. Lora Wellman notes that it was the neighbor to the South that was opposed. The neighbor's complaint was that it would look 'too industrial.' Lora notes that he has an 8' chain link fence surround his property. Don Stock says that the neighbor to the North called in and stated that he thought the fence was already being installed. He says that on the South side of the property the chain link is about six feet tall and the privacy fence has been raised to roughly seven feet tall.

President Hussey asks Don Stock if the Staff Report is representative of his feelings. Don Stock feels that he couldn't support this fence because then everyone would want an eight foot privacy fence. That's why Mr. Volpe presented his own staff report. Don says he can't support it because of the challenges it would propose in the future with more people wanting eight foot fences. He asked Adam Volpe to complete his own findings on this petition, since Don couldn't support the fence.

President Hussey notes that the findings state 'Staff Report' and was presented as such. Don Stock notes that the petitioner has the right to complete their own findings. He notes that most of the people that petition the board have no idea how to prepare findings for the board. Sam Payne asks Adam Volpe if he prepared the 'Staff Report.' Adam says yes, based on the template he was sent. Adam Volpe notes that the issue with the neighbors has been going on for years and he didn't feel it necessary to detail every event. President Hussey says that's not the intent of the meeting, but there are formalities to the process. President Hussey closes the public hearing. He notes that if Don Stock doesn't agree with what is being presented, the recommendation of the staff should be to deny. He feels that it's Don's obligation to present the facts and either recommend approval or denial. After the staff report is read, it's up to the board to either approve or deny. Don Stock says that he wanted Adam Volpe to have his public hearing and he figured that he would be asked what his thoughts were. Don clarifies that he doesn't support the eight foot fence but wanted Mr. Volpe to be able to appeal the decision to the BZA. Don Stock asks if its right for the staff report to slant the board's view prior to the petitioner making their own argument. Sam Payne notes that he agrees with President Hussey, the staff report should have recommended denial, then it's up to the board whether to approve/ deny. Kevin Myers states that he feels the same way and notes that staff reports that recommend approval are swaying the board in the same way that a denial recommendation would sway the board. Don says that he questions that on every staff report he completes because he feels he's telling the board how to vote. Don notes that is why he asked Adam Volpe to complete his own findings, and why he spoke up against the fence afterward. He notes that if variances continue coming for taller fences, perhaps the ordinance should be adjusted. Don also states that he feels this will make the property look more industrial, which is why industrial zoned areas are allowed to have 8' fences. Sam Payne says that the pictures make it very clear why the fence is needed but staff has the obligation to say yes or no. President Hussey says that every decision made will have people who agree and people who don't. Don Stock asks if his opinion would outweigh the petitioner's findings. President Hussey says yes according to human nature. Human nature would be to agree with Don because he is the expert presenting the findings, but ultimately the responsibility falls on the board to make an unbiased decision. President Hussey recommends having the petitioner do their own homework, especially if they don't agree with the staff report. He notes that if the findings state 'staff report,' it should reflect the feelings of the staff. Don Stock notes it says 'prepared by petitioner.' President Hussey says that he feels it's appropriate for the board to have a true staff report, prepared by the staff. If the petitioner wants the board to see a different view on the staff report, they may submit their feelings on the findings as well. Some further discussion was had regarding staff report presentation (who should present/ prepare it).

President Hussey calls for further discussion from the board. Hearing none, he moves on to the giving of notice. The board noted that the notice of public hearing was published in the Frankfort Times on September 3, 2022 and certified mailings were mailed to every property owner within 100 feet of the petition site on August 30, 2022. There is no conflict of interest present and quorum was met. President Hussey calls for a motion.

Motion: Approve application as presented based on findings of fact submitted by Adam Volpe.

Motion made by: Sam Payne

Second: Mike Nichols

Roll Call:

- Yay- Sam Payne, Kevin Myers, Mike Nichols, David Hussey

Sam Payne notes that Don Stock has the right to recommend denial and defer the burden of finding facts to the board. Kevin Myers agrees but also notes that there was no ordinance that he could fall back on for denial. President Hussey

notes that technically anytime a petition comes before the board it is because the ordinance says no. Don Stock says that he understands where the board is coming from, but he had trouble recommending denial solely based on the fact that the ordinance says a 6' fence is the maximum for that district. President Hussey says that he feels that's fair, but that is ultimately grounds for recommending denial in the staff report. Don Stock notes that if the board approves every variance to the ordinance, then maybe the ordinance should be looked at. He uses chickens as an example. He states he has been chasing chickens out of town since he took the job so he has begun looking at adopting ordinances to allow hens in town, not roosters. Sam Payne notes that even if Don recommends approval in the staff report, the board must find the findings true and that burden is not on Don. President Hussey recommends all petitioners do their own homework for the board and he prefers that Don prepares/ presents the staff report.

OTHER BUSINESS: President Hussey notes that a variance violation letter was mailed September 22nd and presented to the board regarding Suren Vardanian at 453 N Jackson St. Don Stock notes that Suren wasn't home when the letter was supposed to be delivered. After consulting with Les Bergum (city attorney), he feels that a letter should be delivered to the actual business instead of the mailing address. After delivery, the fifteen day time clock will begin.

President Hussey calls for any other business. Hearing none, meeting was adjourned.

Minute's summary typed by Ashlee Bassett.

Respectfully Submitted,

Ashlee Bassett