

Zoning Board of Appeals
 Wednesday, September 5, 2012
 6:00 PM Town Hall

Edinburgh Zoning Board of Appeals met on Wednesday, September 5, 2012, 6:00 p.m.,
 Edinburgh Town Hall.

Members Present: Keith Sells
 Becky Wilhelm
 Richard Pile
 Lloyd Flory
 Ron Hamm
 Rhonda Barrett, Secretary

Others Present: Wade Watson, Building Commissioner
 Dustin Huddleston, Town Attorney

Keith Sells opened the meeting at 6:00 p.m. with roll call, Keith Sells, here, Becky Wilhelm, here, Ron Hamm, here, Richard Pile, here, Lloyd Flory here.

Keith Sells presented the May 2, 2012 meeting minutes for approval, and asked for a motion to approve the minutes. Richard Pile made motion to approve minutes. Ron Hamm seconded. Keith Sells asked for all in favor to raise right hand. All right hands were raised. Motion approved.

Keith Sells then presented the sign in sheet for anyone in attendance who wished to receive notification of any further information concerning tonight's meeting.

Dustin Huddleston then swore in those in attendance who wished to speak during the meeting. Dustin asked that anyone who spoke tonight to please give their name and address for the meeting records.

Keith Sells asked Wade Watson to present his report regarding the variance request.

Wade Watson presented case ZB 2012 V - 5, which is a request from Justin P. Toth, 409 Franklin Street, Edinburgh, Indiana, to receive a Developmental Standards Variance to allow the construction of a 40 x 40 foot accessory building with 10 foot sidewalls, ordinance allows for a 24 foot by 30 foot accessory building with 9 foot sidewalls. See attached staff report. Staff recommendation is for approval of the petition subject to the following conditions:

1. The building shall be compliant with International Residential Building Codes adopted by the State of Indiana, and all other requirements of the Edinburgh Zoning Ordinances, including but not limited to the overall height of the structure is not to exceed eighteen (18) feet above ground level.
2. That prior to construction of the accessory building, the Petitioner obtain a certified property survey which establishes the exact location of the property boundary lines and identifies the proposed location for the accessory structure to ensure compliance with the side yard setback standard and submit a copy to the Building Commissioner for review and approval.
3. That no fence or any other obstruction ever be erected or placed along the east side of the property that would in any way limit or hinder access to the rear of the property by Fire and/or Rescue personnel or equipment.

Keith Sells asked the board if they had any questions for Wade. Richard Pile asked Wade about condition #3 in the staff report stating nothing to be placed along the north side of the property. Wade verified that it was a typographical error in the report and should read the east side of the

property. There being no further questions for Wade, Keith then asked Justin Toth if he had any further information for the board.

Justin Toth stated that he was applying for a garage to store his cars, trucks, motorcycles, and four wheelers that he owns, that he has collected. He currently has them stored in other relatives garages and would like a place of his own to store them. He stated that he would not be running a business out of the garage. The property is an investment property that he purchased and that the garage would be for his own personal vehicles, not business equipment.

Keith then asked if anyone from the audience would like to address the board with any questions or concerns.

Dustin Huddleston stated that before any one spoke he wanted to present the written submittal from some of the neighbors and that it would be marked as Remonstrators Exhibit "A" (see attached).

Dustin then reminded the audience that the Petitioner had ten minutes to talk and that the remonstrators had a total of ten minutes to talk, to be shared by all the remonstrators.

Larry Burton, 500 Franklin Street, stated that he also has vehicles that he stores in his garages and that he was required to go through the same process to build his garages, and felt that the petitioner should be able to build the garage as long as the petitioner does not conduct business out of the garage.

Charity Hagan, 407 Franklin Street, stated that she lives beside Justin Toth's property, and does not understand the need for such a large building that would block everything.

Patricia Quillen, 309 Franklin Street, stated that she has a problem with the size of the building, that it is not the typical family garage. She would like to keep the neighborhood appearing as a residential neighborhood, that the house would be smaller than the garage. Also when driving down the street, you would be able to see a monstrous building on either side of the house. The view from her patio she really does not want to look at a building of this size. She feels that this is a commercial sized building and should be in a commercial area. She would like to ask the board to not grant the variance.

Judy Streeval, 408 Franklin Street, stated that she is concerned with the road behind the house as the school kids use that as a quick way to school and the pool and is concerned with extra traffic through that area.

There being no further audience members wishing to speak, Keith closed public comments and that now the board would decide whether to accept or deny the petition.

Dustin Huddleston reminded the board that whether they pass or reject the petition, that on page three of the Staff Report are the three requirements for making a decision. The board could accept the variance as requested, and be in agreement with Wade's findings, that approval will not be injurious to the public health and safety, that adjacent properties will not be affected in an adverse manner, and that strict application will not result in a practical difficulty. If the board denies the petition, at least one of the criteria needs to be found that it will affect surrounding land owners, or that it will be injurious to the public health and safety. If the board approves the variance, Wade has attached recommendations and if the board wants to include those to be sure and state that when making a motion.

Richard Pile stated that from what he understood that most people in attendance were concerned with the building being turned into a commercial use, and could there be restrictions placed on the variance to prevent that from happening at a later date.

Dustin asked Wade if the current zoning does not allow for the property to be used as a commercial use; and if the owner wanted to use it as commercial property, there would need to be another variance filed and a public meeting held or the property owner would need to apply to rezone the entire property and another public meeting.

Wade stated that Dustin was correct, the property is zoned for Residential and is not zoned for Commercial and a commercial business could not be operated out of the building without coming before the board to seek another variance.

Dustin stated that even though the current zoning prevents the use as commercial, if the board wants to add that restriction to the motion that they could do that if they wanted to.

Keith asked if any of the other board members had any questions, comments or would like to make a motion.

Lloyd Flory asked if there were any issues with compliance with the master plan.

Dustin stated that by zoning ordinance the property cannot operate as a commercial enterprise, as part of the master plan zoning ordinance.

Lloyd asked for clarification that what was being sought was a variance from the master plan to request a different size than the maximum allowed in the zoning ordinance.

Wade stated that yes the variance request is to build an accessory structure that exceeds the maximum size in the zoning ordinance.

Richard asked if the building was just bigger and not too close to the boundaries and if the building was exceeding the height allowed.

Wade stated that the variance does not exceed the height or the minimum standards for setback, but that the request does exceed using more of the back yard than the ordinance allows. Ordinance allows for 30% of the back yard to be used for accessory buildings, but this building would use 32% of the back yard.

Keith asked if denial of the petition could be based on strict application of the ordinance would not pose a hardship on the property owner

Dustin asked if the building were reduced by 2% then would a variance be required

Wade stated that if reduced 2% it would still require a variance as the maximum size allowed by ordinance is a 24 x 30 accessory building. He also stated that there were two things to consider with the oversize structure.

1. The structure is bigger than the maximum size for an accessory building.
2. The structure exceeds more than is allowed in the maximum existing space of the back yard.

Dustin stated that if the board wanted to deny they could state that the petitioner would need to build the structure according to what the current zoning standards are.

Keith Sells made a motion to deny the request based on the fact that the current ordinance does not present a hardship on the petitioner.

Dustin stated that it would be based on Criteria #3 that strict application does not result in a practical difficulty.

Lloyd Flory seconded.

Keith asked for all in favor to say aye. Keith, Lloyd, and Ron stated aye.

Keith then asked for all opposed to say aye. Richard and Becky stated aye.

Motion passed 3 - 2 to deny the request.

Keith asked if anyone had anything else.

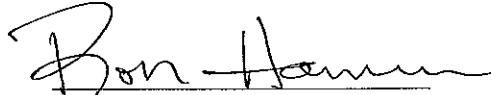
Justin Toth asked if they could change the size of the building now at tonight's meeting.

Dustin stated that it could not be changed as there had already been a vote.

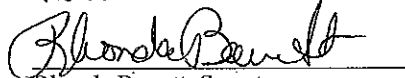
Tim Toth asked if the variance had been approved or denied.

Keith stated that it had been denied.

There being no further business, Ron Hamm made a motion to adjourn the meeting. Richard Pile seconded. Keith Sells asked for all in favor to say aye. All ayes. Meeting adjourned.



Keith Sells, Chairman
Ron Hamm



Rhonda Barrett, Secretary



TOWN OF Edinburgh

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BZA Staff Report

To: BOARD OF ZONING APPEALS MEMBERS
From: Wade D. Watson, Building Commissioner
Date: September 5, 2012
Re: Case ZB 2012 (V5) USE VARIANCE

GENERAL INFORMATION:

Applicant: Justin P. Toth
960 Cambridge Lane
Edinburgh, IN 46124

Agent: None

Property Address: 409 Franklin Street, Edinburgh, IN 46124

Property Owner: Same

Property Number: 41-12-34-012-123.000-002

Legal Description: Lot Number 5 in Block 12 in Maplewood Addition

Acreage: 0.166 acre (7,248 Square Ft.)

Lot Size: 50' X 145'

Zoning: R 4 Medium Density Residential

Land Use: Residential Single Family Dwelling Platted Lot

FEMA Flood Plain: Subject Property does not exist in a designated flood area

SURROUNDING ZONING:

North: R 4:
South: R 4:
East: R 4:
West: R 4:

SURROUNDING LAND USE:

Medium Density Residential
Medium Density Residential
Medium Density Residential
Medium Density Residential

REQUEST:

Case ZB 2011 (V5) Justin P. Toth. The petitioner has requested a variance from Developmental Standards of Division 11, Article 156.271 of the Town of Edinburgh Zoning Ordinance to allow the construction of a 40-feet x 40- foot accessory building with 10 feet sidewalls on the property known as 409 Franklin Street, Edinburgh IN 46124.

Petitioner has satisfied all documentation requirements, legal and public notifications specified in the Town of Edinburgh Zoning Board of Appeals Application Packet for Variance/Special Exception.

PURPOSE OF STANDARDS:

The purpose for the establishment of the six districts designated for residential use, ("R1", "R2", "R3", "R4", "R5", and "R6") is to create an attractive, stable, and orderly residential environment. The only uses permitted in these districts are those which would not detract from the residential character of the neighborhood. Each district has established density standards, dwelling types and the lot and yard requirements to provide for the various housing needs and desires for citizens.

CASE CONSIDERATIONS:

1. Town of Edinburgh Zoning Ordinance, Division 11, Section 156.271 establishes the definition of a "PRIVATE GARAGE" as: "An accessory building with capacity for not more than two (2) motor vehicles per family, provided that said accessory building shall be no larger than 24-feet by 30-feet with 9-foot sidewalls."
 - Petitioner is seeking a variance to construct a forty (40) feet by forty (40) feet with ten (10) feet side walls.
2. Division 2, Section 156.036 establishes the side yard and rear yard setback requirements for accessory structures on properties in districts zoned R4 to be a minimum five (5) feet.
 - The property has an effective lot width of fifty (50) feet; therefore the proposed structure of forty (40) feet wide could be placed on the lot to comply with the minimum setback requirements for this district, provided the exact setback distance is maintained on both the north and south sides of the structure.
3. Division 11, Section 156.271 (e) establishes that the maximum height of an accessory building "shall be no higher than 18 feet above ground level."
 - Compliance with this standard can be maintained provided the roof slope of the proposed structure is at or below four (4) units vertical in twelve (12) units horizontal or a 4:12 pitch. (see Exhibit 1)

4. Division 11, Section 156.271 establishes the definition of a "REAR YARD" as: "A yard extending across the full width of the lot between the rear of the principal building and the rear lot line unoccupied other than by accessory buildings which do not occupy more than 30% of the required space, and steps, walks, terraces, driveways, lamp posts, and similar structures, the depth of which is the least distance between the rear lot line and rear of the principal building."

- The rear yard of the property is fifty (50') feet by approximately one hundred (100') feet between the rear of the principal building and the rear lot line or approximately five thousand (5,000) square feet. The proposed structure is sixteen hundred (1,600) square feet which represents approximately 32% of the space existing in the rear yard of this lot. (see Exhibit 2)

CRITERIA FOR DECISIONS:

(**The petitioner will need to address the Criteria for Decisions in their presentation**) In taking action on all variance requests, the Board of Zoning Appeals shall use the following decision criteria, consistent with the requirements of the Indiana Code. The Board may grant a variance from development standards and limitations of this Ordinance if, after a public hearing, it makes findings of facts in writing (consistent with IC 36-7-4-918.5) that:

1. **General Welfare:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

STAFF FINDINGS:

The approval of this variance will not be injurious to the public health, safety or general welfare.

2. **Adjacent Property:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

STAFF FINDINGS:

Adjacent properties to the subject property will not be affected in a substantially adverse manner.

3. **Practical Difficulty:** The strict application of the terms of the ordinance will result in a practical difficulty in the use of the property. (This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.)

STAFF FINDINGS:

The strict application of the ordinance will not result in a practical difficulty in the use of this property. (The petitioner should explain how the strict application of these ordinances results in a practical difficulty in the use of the property.)

STAFF RECOMMENDATION

Based on these investigation findings, staff recommends **APPROVAL** of the petition subject to the following conditions:

1. The building shall be compliant with International Residential Building Codes adopted by the State of Indiana, and all other requirements of the Edinburgh Zoning Ordinances, including but not limited to the overall height of the structure is not to exceed eighteen (18) feet above ground level.
2. That prior to construction of the accessory building, the Petitioner obtain a certified property survey which establishes the exact location of the property boundary lines and identifies the proposed location for the accessory structure to ensure compliance with the side yard setback standard and submit a copy to the Building Commissioner for review and approval.
3. That no fence or any other obstruction ever be erected or placed along the ^{east} ~~north~~ side of the property that would in any way limit or hinder access to the rear of the property by Fire and/or Rescue personnel or equipment.

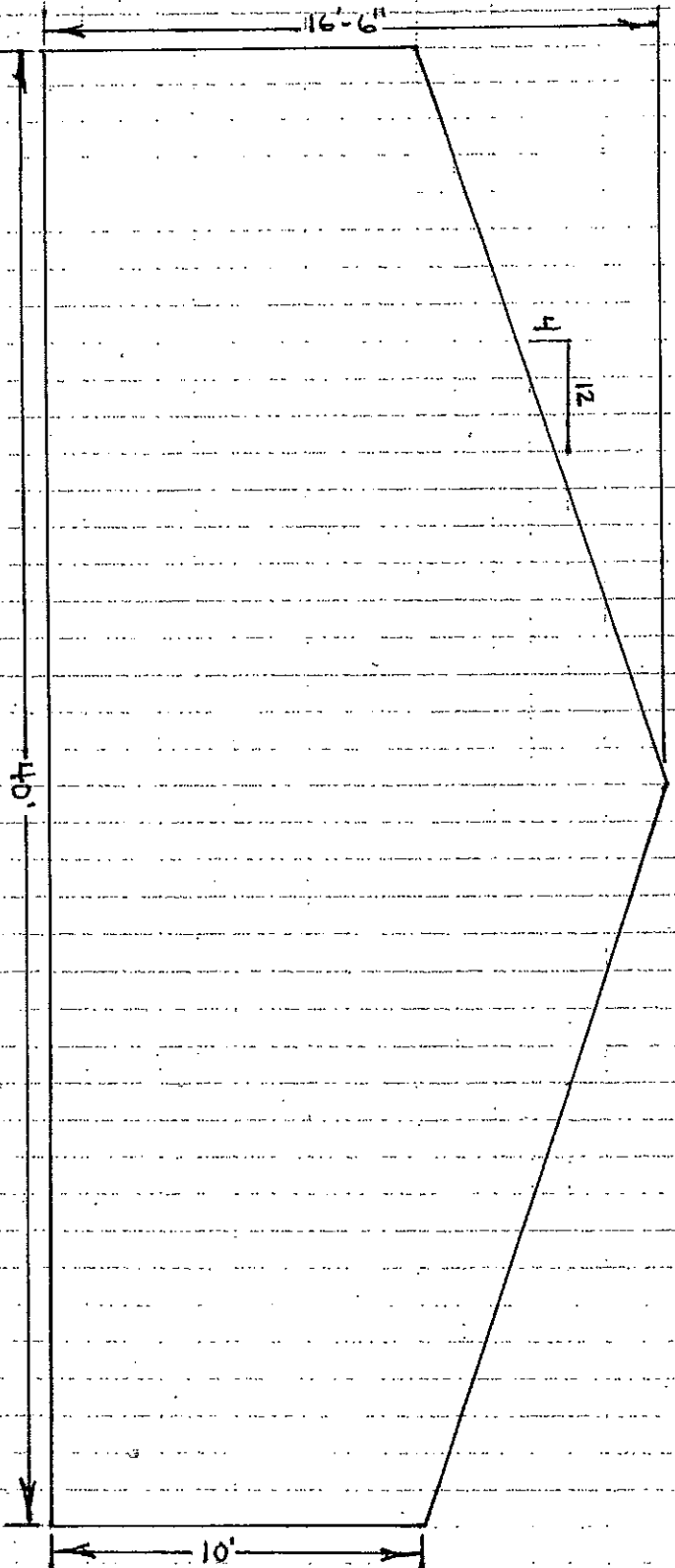
Respectfully Submitted,



Wade D. Watson
Building Commissioner
Town of Edinburgh

JUSTIN TOTT
409 FRANKLIN ST.
EDMUNDS, IN 46124

CASE NO: ZB 2012 (S)
EXHIBIT # 1



JUSTIN TOTH
409 Franklin St.

Created By: ZB 2012 (6)
Date Created: 8/28/2012

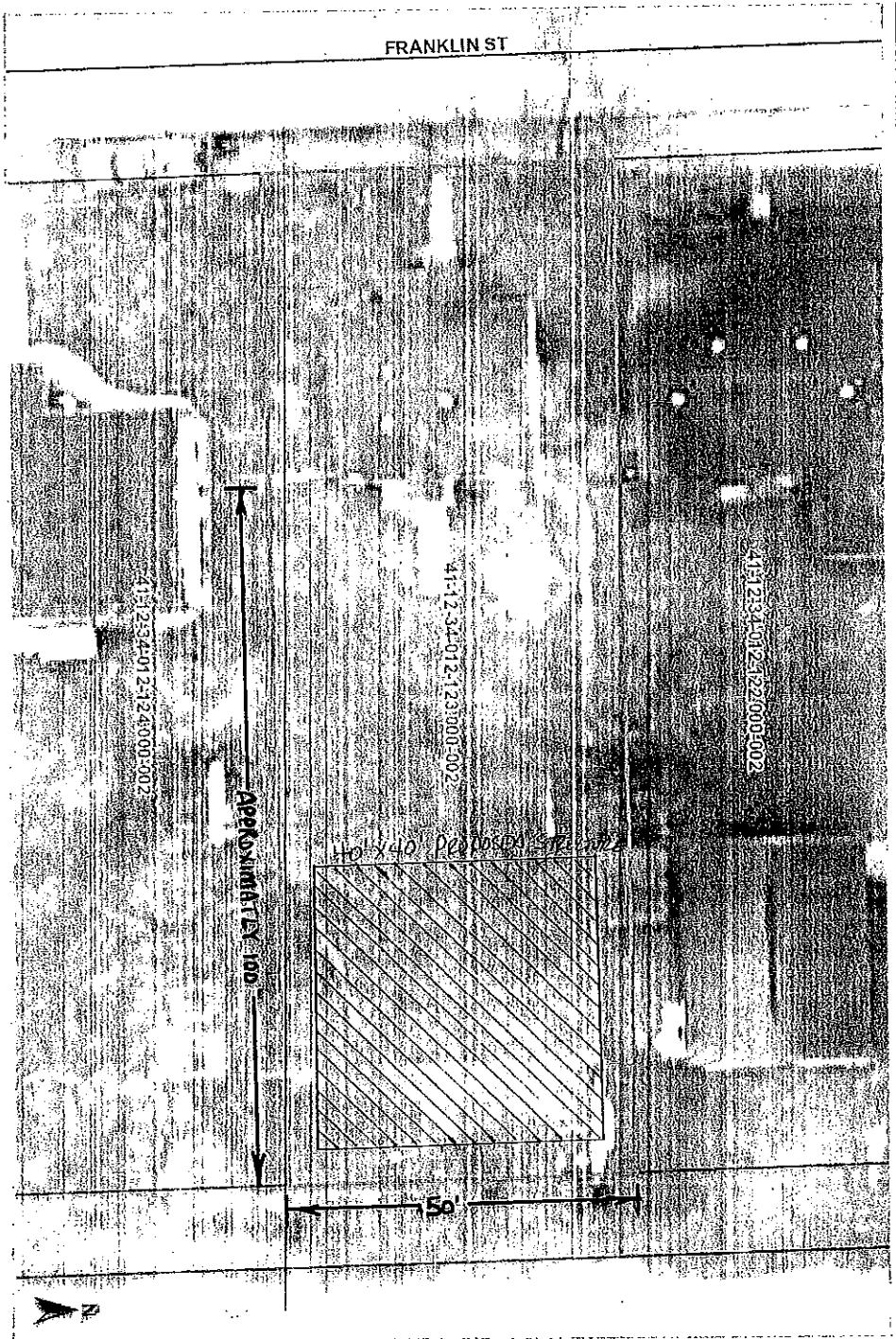


EXHIBIT Z

To: The Town of Edinburgh Zoning Board of Appeals

Re: Accessory Building, 409 Franklin Street, Edinburgh, IN,
Lot #5, #12 Maplewood Addition
Parcel # 41-12-34-012-123.000-002
Justin P. Toth

We the undersigned are NOT in favor of the proposal to construct an accessory building at 409 Franklin Street, Edinburgh, IN due to the following reasons:

The building size of 40x40x10 indicates that this building will be used for commercial purposes, therefore disturbing the feel of a neighborhood, as this is a strictly residential area. Should this building be used for storage purposes, it is of small warehouse size and we feel it should be placed in a commercial area. We also look to the future, should property be sold, the new owner could easily use this type and size of building as a commercial building. Should this building be used, at any time, for commercial purposes, the increase in traffic would have an adverse affect in our area and pose a danger to those East Side Elementary students that walk home. Should this issue arise, we the home owners on Franklin Street would be charged with the task of proving it is being used for commercial purposes, in a residential area.

We feel that a building of this size poses a fire risk to neighboring homes should a fire occur, due to the close proximity to neighboring property lines and size. We feel that the close proximity to the neighboring property lines will pose an issue for the Edinburgh Fire Department should they need access to neighboring homes.

The notice of public hearing did not indicate the construction of the building. Should the building be constructed as "pole barn" style or any other commercial construction style, the appearance would be detrimental to the appearance of our neighborhood. If the building appears as if it is for commercial purposes, it also will appear as an eye sore to any home that it is visible from our properties or the street.

We wish our neighborhood to appear as an absolute residential area. Therefore, we feel a building of this size would not be a good fit for our neighborhood.

We respectfully request that the proposal of the construction of said building be denied.

Sincerely,

Franklin Street Residents

Judge Sheerval - 408 Franklin St.
Charity Hagan - 407 Franklin St.
Ashley Vaughn - 402 Franklin St.
Jon Burton - 407 Franklin St.
Mysa Burton 405 Franklin St.
Teresa Davis 311 N. Clay St.
Leonard Littlejohn 503 N Franklin St.
Ervin Littlejohn 503 Franklin St.
R. L. Littlejohn 503 Franklin St.
James W. Dallen 305 Franklin St.
Rennie Beck 413 Franklin St.
James R. Burton 803 Tower St.
CHAD SPARKER
FRANKLIN ST.
Betty Gears
COURTNEY J. R. DAVIS 404 Franklin St.
Patricia Bailey 309-311 Franklin St.
David Dallen 313 Franklin St.
N. Dallen 312 Franklin St.