

Zoning Board of Appeals
Wednesday, July 1, 2015
6:00 PM Town Hall

Edinburgh Zoning Board of Appeals met on Wednesday, July 1, 2015, 6:00 p.m., Edinburgh Town Hall to hear **Case #ZB2015-02 David Whittemore Developmental Standard Variance - Shipping Containers.**

Members Present: Keith Sells
Becky Wilhelm
Ron Hamm

Others Present: Wade Watson, Building Commissioner

Keith Sells opened the meeting at 6:00 p.m. with roll call. Keith Sells here, Becky Wilhelm here, Ron Hamm here, Richard Pile not here, and Lloyd Flory not here.

Keith Sells reminded the board that since there was only three members in attendance tonight, that any action to be carried forward has to be a unanimous vote. For example if the vote is 2-1 or 1-2 the petition would need to be tabled to the next scheduled meeting.

The next item on the agenda is minutes from the May 6, 2015 meeting. Ron Hamm made a motion to accept the minutes as presented. Becky Wilhelm seconded. Keith asked for all in favor to signify by raising their right hand. All right hands raised. Motion passed.

Keith Sells informed those in attendance that if they wished to speak during tonight's meeting they would need to be sworn in and asked them to stand up to be sworn in. Rhonda Barrett swore in all who wished to speak tonight.

Keith Sells reminded the audience that there is a ten minute time limit for those who wish to speak in favor of the petition and there is ten minute time limit for those who wish to speak that are opposed to the petition. For example if 4 or 5 people wish to speak there is ten minutes total time.

Keith Sells also informed those in attendance that there is a sign in sheet for those who wished to receive further information concerning tonight's meeting.

Keith Sells asked Wade Watson to give his presentation for Case #ZB2015-02 David Whittemore - 207 S. Kyle Street – Developmental Standard Variance to allow shipping containers to remain on property.

Wade Watson gave his presentation on the variance request (see attached staff report). The property is located at 207 S. Kyle Street, and is in R4 Medium Density Residential Zoning. The 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. The request is for a Variance from Developmental Standards from the Town of Edinburgh Zoning Ordinance Division 2, Article 156 – District Regulations, to allow shipping containers to remain on the property. He presented pictures of the containers that were taken earlier in the month of June as well as current photos taken on Monday, June 30th, of the containers, showing that they have made an attempt to make the containers more attractive by painting them. Staff has received multiple comments from local citizens expressing dissent relating to the variance request and just before tonight's meeting received a petition with twelve signatures of neighbors opposing the petition. (See attached)

Staff recommendation is for **denial** of the petition for a Variance from Developmental Standards from the Town of Edinburgh Zoning Ordinance Division 2 Article 156, thus requiring the removal of the shipping containers currently existing on the subject property within sixty (60) days.

Keith Sells asked the board if they had any questions for Wade about the petition.

Becky Wilhelm asked if the variance was specifically for the containers in the pictures. Wade said yes.

Keith Sells asked Mr. Whittemore if this was being used as commercial if he was receiving payments for the parking of the RV's and containers on the property. Mr. Whittemore stated that no they travel full time for their employment and all of their belongings are in the containers. Mrs. Whittemore stated that the containers are just personal property. Mr. Whittemore stated that the containers were purchased for storage to keep dust from the mill across the street getting on their personal belongings; the containers are sealed water and air tight.

Keith Sells then asked the Whittemore's to present their information.

Stephanie Whittemore thanked the board for their time and stated that she and her husband both had traveled 6 1/2 hours to be here tonight. She didn't feel like their odds were very good to get the variance but wanted to give them information on why they have the containers. They own the property at 207 S Kyle but have it leased to a tenant. They do not have a home; they live in a motor home as her husband travels full time to get work, their only means of income. Some of their belongings are at her parent's home in Franklin, Indiana. This property is all that she and her husband own together, they sold their other home 1 1/2 years ago so they along with their teenage daughters could be together as a family. They needed a place to store their belongings, so as the property is across the street from the mill, they were concerned with having a place to store their stuff to keep it dry and free from dust. In their belongings are items of memorabilia from 6 years ago when their daughter had brain cancer, pictures, and other items. The shipping container was never intended to be a permanent fixture and is a temporary solution, until they can buy a home again. They painted the containers so they would not be such a stand out. Immediate removal will cause a financial hardship on the family. She would like to keep them but not sure of a time frame of how long they would need to keep them on the property.

Keith Sells asked the board if they had any questions for the Whittemore's. There being no questions Keith asked if there were any remonstrators that wished to speak.

Donnie Henderson, 303 South Kyle Street, stated he owns 6 lots in the general area, and is opposed to the shipping containers. He stated that he feels sorry for the situation the family is in, and suggested using storage facilities to store their items, or possibly move the two shipping containers to their parent's property in Franklin.

Stephanie Whittemore commented that they had checked with all of their family members and none of them have a homeowner's situation to allow that.

Donnie Henderson commented that he wanted to go on record that he opposes the variance. He further stated that the containers have been there for 1½ years and does not know how much longer the containers will be there, and he is in opposition to any variance.

David Crawhorn, 310 West Park, is opposed to the variance, and stated he feels sorry for their problems.

Karen Fitzpatrick, 502 East Perry Street, is in opposition to the variance. She is concerned that if the shipping containers are allowed this time, then other families will want to put shipping containers on their properties, and doesn't think this is what the Town of Edinburgh would want to see in backyards.

Charles Fitzpatrick, 502 East Perry Street, is in opposition to the variance. He stated that the situation has continually gotten worse, not only containers, but it has become an RV park.

Stephanie Whittemore stated that the RV's were not being discussed tonight; they were not addressed in the complaint.

Charles Fitzpatrick further commented that it has continually gotten worse, he feels sorry for the family's predicament, but as had been mentioned earlier, there are storage facilities available. He also commented that if the storage containers are not allowed in Franklin, then why should they be allowed here. He feels the longer the containers are on the property, the more it affects his property value.

Robbin Henderson, 303 South Kyle Street, lives directly across from the property. She stated that she feels sorry for the problems the family has, but that there is a lot of traffic in and out of the property for a family that does not live here. She commented that she knows tonight is not about the RV's, but sometimes there are 5 RV's there, small U-Haul trailers, and she feels that the property is being used as a storage lot.

Other members of the audience were in agreement that they thought the property was a storage lot.

Rhonda Simpson, 505 East Campbell Street, is opposed to the variance; she has lived in her house for 38 years, and has worked hard to keep her property nice. She and her husband purchased the run down property beside their residence, tore it down and built a house to improve the neighborhood. She further stated that she does not like driving by and seeing the shipping containers every day.

Marilyn Crawhorn, 310 West park Drive, is opposed to the request; she feels that the property is an eyesore.

Keith Sells asked the board if they had any questions for the petitioner. There being no questions he asked if somebody would like to make a motion.

Ron Hamm made a motion to deny the variance for the shipping containers.

Keith Sells asked him what he was basing his motion on which one of the Criteria for Decisions of the Staff Report.

Ron Hamm stated that it was based on item #2.

Keith Sells stated that there is a motion to reject the petition based on the value of adjacent properties to the subject property could potentially be affected in a substantially adverse manner.

Keith Sells then asked for a second to the motion.

Becky Wilhelm seconded.

Keith Sells asked for all in favor to signify by raising their right hand. All right hands were raised. Motion passed.

Keith Sells offered his apologies to the family for their situation, and he hopes they can get everything work out, and that he understands the neighbors concerns.

Stephanie Whittemore asked what the time limit was to remove the containers.

Keith Sells commented that would be up to Wade.

Wade Watson stated that his recommendation was 60 days.

Stephanie Whittemore asked if they could get an extension on the time. She is not sure what to do with the containers, and how long it would take to sell them.

Wade Watson stated that he would need to consult with the attorney to see what the time limit is, that his recommendation was for 60 days, that it was not specified in the motion.

Keith Sells stated that he would make a motion to not give any longer than 60 days to remove the containers.

Becky Wilhelm seconded the motion.

Keith Sells asked for all in favor to raise their right hand. All right hands were raised. Motion passed.

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

Keith Sells, Chairman

Rhonda Barrett, Secretary

DRAFT

PETITION

Date: June 25, 2015
Case No: BZ 2015-02
Address of Zoning Request: 207 S. Kyle Street
Edinburgh, IN 46124

To: Zoning Board of Appeals
Town of Edinburgh

We, the undersigned owners of property affected by the requested petition to allow shipping containers to be placed in a residential area, do hereby protest against any changes made to the Edinburgh Zoning Code Chapter 156.

[illegible]



TOWN OF Edinburgh

Administrative Offices: 107 South. Holland Street, Edinburgh, IN 46124 Wade D. Watson, Building Commissioner, Email: wwatson@edinburgh.in.us

BZA Staff Report

To: *BOARD OF ZONING APPEALS MEMBERS*
From: Wade D. Watson, Building Commissioner
Date: July 1, 2015
Re: *Case BZ 2015 (02) VARIANCE REQUEST*

GENERAL INFORMATION:

Applicant: David Whittemore
207 S Kyle Street
Edinburgh, IN 46124

Property Address: 207 S Kyle Street, Edinburgh, IN 46124

Property Owner: David & Stephanie Whittemore
894 Scorpio Ct
Franklin, IN 46131

Property Number: 41-12-34-031-073.000-002
Lot Size: 68' x 136' (0.239 Acres)
Zoning: R4 Medium Density Residential
Land Use: Residential
FEMA Flood Plain: Subject Property does not exist in a designated flood area

SURROUNDING ZONING

North: R4- Suburban Residential
South: R4- Suburban Residential
East: R4- Suburban Residential
West: OI- Open Industrial

SURROUNDING LAND USE

Residential
Residential
Residential
Open Industrial

REQUEST:

Case BZ 2015-02 Petitioner requests a Variance from Developmental Standards from the Town of Edinburgh Zoning Ordinance Division 2, Article 156 – District Regulations, to allow shipping containers to remain on property known as 207 S Kyle Street, Edinburgh, IN 46124. This property is in a district zoned as Medium Density Residential.

DOCUMENTATION AND PUBLIC NOTIFICATIONS:

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 intent of the Edinburgh zoning standards is to promote the public health, safety, and general welfare of the community. Districts designated for residential use are limited to dwellings and public and semi-public uses which are normally associated with residential neighborhoods. The only uses permitted in the residential districts are those which would not detract from the residential character of the neighborhood. The purpose of these districts is to create an attractive, stable, and orderly residential environment. Further, these ordinances promote the aesthetic enhancement of the community and encourage the protection of property values within each neighborhood.

CASE CONSIDERATIONS:

1. Division 2, §156.029 of the Edinburgh Zoning Ordinances states that R-4 Districts: “are limited to dwellings and public and semi-public uses which are normally associated with residential neighborhoods. The only uses permitted in the residential districts are those which would not detract from the residential character of the neighborhood. The purpose of these six [residential] districts is to create an attractive, stable, and orderly residential environment.”
2. §156.036 of the Zoning Ordinance states that the permitted uses for each district are shown on Table 1. “Uses not specifically listed or defined to be included in the categories under this article shall not be permitted.”
3. Table 1 permits single, two, and multi-family dwelling and family child care home, gardening and horticulture and accessory uses. Certain other uses are allowed as special exceptions. The storage or parking of freight trailers is not a permitted use in the R-4 district.
4. §156.175 governs off-street parking. Subsection 12 states that off-street parking “shall be used only for the parking of vehicles of occupants, patrons, visitors, or employees and shall not be used for any kind of ... continuous storage or a vehicle for more than forty-eight (48) hours.” Though that section is not directly applicable, because those trailers are not in a driveway, it shows the ordinance’s intent not to permit such use. If driveways and parking lots cannot be used to store freight trailers, then side yards cannot either.

5. §156.271 states that words that are not defined are to be construed in their generally accepted meanings as defined by Webster's Dictionary.
6. The use table, §156.029 and §156.036 justify the Town finding that the storage of those freight trailers is a zoning violation.
7. By the authority granted in Section §156.253, the Board of Zoning Appeals shall have the power to authorize Special Exceptions provided specific requirements are met. We have no records indicating a decision by the Board of Zoning Appeals has ever occurred to permit shipping containers to exist on residential property.

CRITERIA FOR DECISIONS:

In taking action on all variance requests, the Board may grant a variance from the development standards of the Ordinance (such as height, location, bulk, area) 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, morals, 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: The value of adjacent properties to the subject property could potentially be affected in a substantially adverse manner. Shipping containers do not promote the aesthetic enhancement nor encourage the protection of property values within the neighborhood.

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.

STAFF RECOMMENDATION

Based on these investigation findings, staff recommends **denial** of the petition for a Variance from Developmental Standards from the Town of Edinburgh Zoning Ordinance Division 2 Article 156, thus requiring the removal of the shipping containers currently existing on the subject property within sixty (60) days.

Respectively Submitted,

A handwritten signature in black ink, appearing to read "Wade Watson", followed by a horizontal line.

Wade D. Watson
Building Commissioner
Town of Edinburgh

DRAFT