



# TOWN OF Edinburgh

Administrative Offices: 107 South Holland Street, Edinburgh, IN 46124

Nick Valenzuela, Building Commissioner, telephone: (812) 526-3513, e-mail: [nvalenzuela@edinburgh.in.us](mailto:nvalenzuela@edinburgh.in.us)

## **Building & Zoning Department Staff Report**

**To:** BOARD OF ZONING APPEALS MEMBERS  
**From:** Nick Valenzuela, Building Commissioner  
**Date:** December 1, 2017  
**Re:** Case No. ZB-2017-04-V

### **GENERAL INFORMATION:**

Applicant: Christopher Link  
6650 S 800 E  
Edinburgh, IN 46124

Owners: Christopher & Amy J. Link  
6650 S 800 E  
Edinburgh, IN 46124

Property Addresses: 210 Franklin Street  
Edinburgh, IN 46124

Parcel Number: 41-12-34-013-083.000-002

Legal Description: Maplewood Addition, Lot 10, Block 8

Acreage: 0.150 acres (6,551 square feet)

Zoning: R-4 "Medium Density" (residential)

Land Use: Vacant Land

FEMA Flood Plain: The subject property does not exist in a Federal Emergency Management Agency designated Special Flood Hazard Area

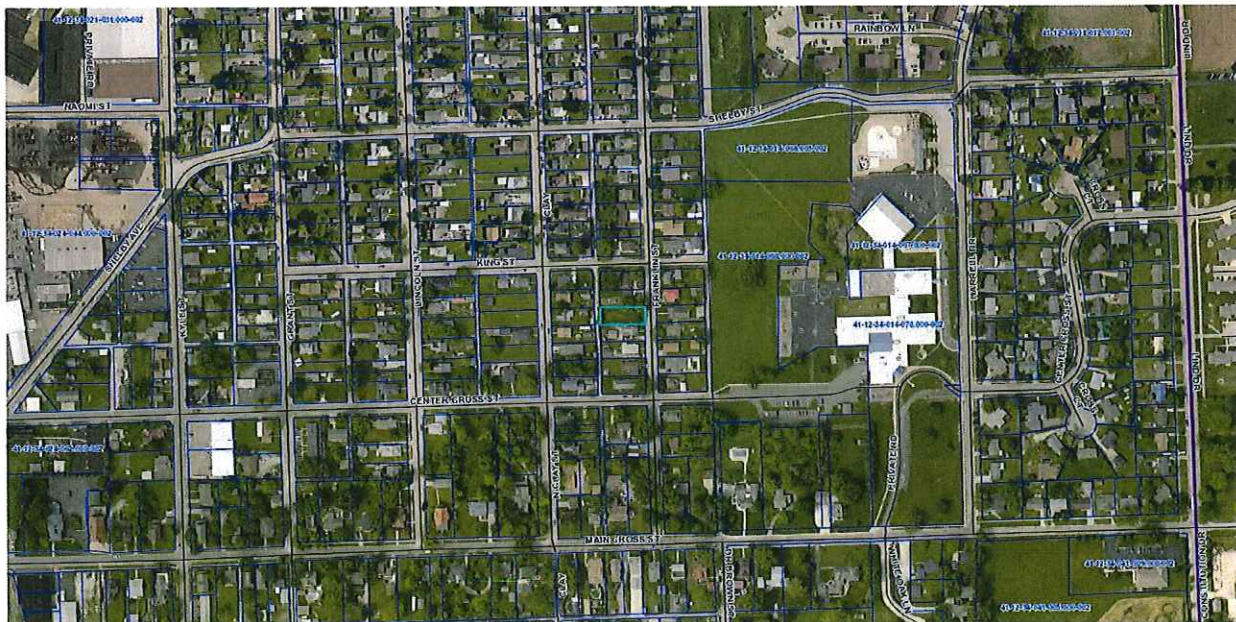
### **SURROUNDING ZONING:**

North: R-4 (red)  
South: R-4 (red)

### **SURROUNDING LAND USE:**

Medium Density (single-family residential)  
Medium Density (single-family residential)

East:	R-4 (red)	Medium Density (single-family residential)
West:	R-4 (red)	Medium Density (single-family residential)



## PETITIONER'S REQUEST

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**Christopher Link** (the "**Petitioner**") is requesting a Developmental Variance from certain requirements of the Zoning Ordinance of the Town of Edinburgh ("Zoning Ordinance") and Town of Edinburgh ("Town") Code of Ordinances.

Specifically, the Petitioner asks for a Developmental Variance from the Town's Board of Zoning Appeals ("BZA") under Division 2 of the Zoning Ordinance to permit placement of a 1995 used, to-be-refurbished, 28' x 40' manufactured home at the parcel. The Zoning Ordinance and Chapter 153 of Town Code of Ordinances do not allow for a single manufactured/modular dwelling unit to be placed anywhere but an approved manufactured housing park. Additionally, the subject parcel does not meet minimum square footage requirements for any single-family dwelling development under its current zoning, R-4 Medium Density [residential].

## DOCUMENTATION REQUIREMENTS, LEGAL & PUBLIC NOTIFICATIONS

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The Petitioner has satisfied all documentation requirements, and legal and public notifications, specified in the Town's *BZA Application Packet for Variance/Special Exception* adopted on January 4, 2017.

## PURPOSE OF STANDARDS

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According to the Zoning Ordinance, Division 2: District Regulations, §156.029: *Residential Districts*:

*"Districts designated for residential use . . . [including] 'R-4,' 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. However, the density standards, dwelling types and the lot and yard requirements are different in the each of the six districts to provide for the various housing needs and desires for citizens."*

According to the Zoning Ordinance, Table 2: Permitted Uses & Special Exceptions indicates that for R-4 zoning, the minimum lot area required in order to permit placement or construction of a single-family dwelling is 7,000 square feet.

According to Town Code of Ordinances, Chapter 153: Modular & Manufactured Housing, all single manufactured housing units are only permitted to be placed in approved manufactured housing parks.

According to Indiana Administrative Code, Title 36: Local Government, §36-7-4-1106:

*"(d) ADVISORY--AREA. Standards and requirements, specified in comprehensive plans and ordinances, adopted under this section for lots and dwelling units may not totally preclude all manufactured homes constructed after January 1, 1981, and that exceed nine hundred fifty (950)*

*square feet of occupied space, from being installed as permanent residences on any lot on which any other type of dwelling unit may be placed."*

## CASE HISTORY

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The Petitioner is the co-owner of the subject property parcel with spouse Amy J. Link. The Petitioner purchased the subject property on or about January 24, 2008.

## CONSIDERATIONS

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On August 28, 2008, the Town's BZA held a hearing for the Petitioner's request to allow construction at the same subject property of a residence that did not meet the parcel's minimum square footage requirement of 7,000 square feet under the Zoning Ordinance. The Petitioner indicated that the subject residence would be 38' x 36' and allow for only 6' side-yard setbacks from adjoining property lines, while the Zoning Ordinance allowed for a minimum of 10' side-yard setbacks from such. The Petitioner also requested permission to construct a detached garage that would be 26' x 32', larger than that permitted by the Zoning Ordinance. The BZA voted to approve the construction of a residence that would meet the side-yard setbacks under the Zoning Ordinance, but denying construction of a garage larger than the dimensions prescribed by the Zoning Ordinance.

The Petitioner ultimately did not develop the subject property parcel as permitted by the BZA in 2008, and it has remained vacant land since.

In **Case ZB 2011 (V2), Herschel & Shirleen Shaw**, the Shaws requested variances from Zoning Ordinance standards to place a 1996 used Skyline manufactured home at 901 South Walnut Street. The request was for variances from Town ordinances for requiring a new manufactured/modular unit; location of the front door to face the street; unit placement only at an approved manufactured housing park; and, lot and yard requirements of a width under 70'. The BZA approved the variances requested on condition that the Shaws provide a permanent foundation for the dwelling.

The Petitioner has remodeled/repaired/refurbished single-family dwellings throughout the Town municipal limits and in the Bartholomew County – Town Buffer Zone area. Some of the addresses where such work has occurred include the following:

- 523 West Center Cross Street
- 108 North Kyle Street
- 400 North Clay Street
- 510 Clay Street
- 400 Franklin Street

Most of the work completed involved substantial rehabilitation to dwelling premises. Current representative photographs include the following (no photos prior to restoration available for this report):



400 North Clay Street



400 Franklin Street



108 North Kyle Street





The subject dwelling to be refurbished and placed at the subject property parcel is currently located at 12180 N US 31 in Taylorsville, just south of the Bartholomew County – Town Buffer Zone. The subject dwelling is currently represented in photos here:



The subject dwelling is 1,120 square feet, 20' square feet in size greater than the minimum R-4 zoning requirement for 1,100 square feet minimum area for a one-story dwelling. The Petitioner has stated that he intends to attach a front porch 10' x 28' to the front of the dwelling.

The Zoning Ordinance, in Division 9: Board of Zoning Appeals, §156.252: *Variances*, states that in approving variances, the BZA may attach such conditions to the variances as it deems necessary to assure compliance with the purpose of the Zoning Ordinance.

An application for Developmental Variance is required to demonstrate that:

- 1) The approval will not be injurious to the public health, safety, and general welfare of the community;*
- 2) The use and value of the area adjacent to the property included in the variance will not be affected in substantially adverse manner;*
- 3) The strict application of the terms of the zoning code will result in practical difficulties in the use of the property; and*
- 4) The variance granted is the minimum necessary and does not correct a hardship cause by an owner, previous or present, of the property.*

In addition, the Zoning Ordinance states that the BZA shall make written findings of the fact that all of the requirements of Division have been met by the applicant for a variance. The Board shall make a written finding of fact that the granting of the variance will be "in harmony with the general spirit, purpose, and intent" of the above chapter, and in the interest of determining "that substantial justice is done."

Prior to this current BZA hearing and by the date of this Staff Report, the Town's Building & Zoning Department received one (1) written public comment objecting to a manufactured dwelling being permitted to be placed at the subject parcel. No separate parties made telephonic/in-person inquiries to the Building & Zoning Department about the nature of the variances requested by the Petitioner prior to the hearing.

#### **CRITERIA FOR DECISIONS:**

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**(\*\*The petitioner should address the Criteria for Decisions in their presentation\*\*)** In taking action on all variance requests, the BZA shall use the following decision criteria, consistent with the requirements of the Indiana Code. The BZA may impose reasonable conditions as a part of its approval.

The BZA may grant a Developmental Variance from the Zoning 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:**

There is substantial evidence that approval of this Developmental Variance **will not** be injurious to the public health, safety, morals, or general welfare. There is no evidence that the Petitioner has a record of development or property management troubles with any of his similar properties.

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:**

There is evidence that adjacent properties to the subject properties **will not** be affected in a substantially-adverse manner. The Development would be consistent with single-family residential and after **Case ZB 2011 (V2), Herschel & Shirleen Shaw**, Bartholomew County Government records indicate that the sole adjacent single-family residential parcel to the Shaws parcel alternately increased and decreased marginally in valuation from year to year since 2012.

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 terms of the ordinance **will** result in a practical difficulty in the development of this property. (The Petitioner should explain how the strict application of these ordinances results in a practical difficulty in the development of the property.) No single-family dwelling of any type is permitted to be placed at the premises under such strict standard since the parcel size conflicts with a 7,000 square foot minimum requirement, making residential development nearly impossible. A majority of parcels on the same block and surrounding streets are also below the 7,000 square foot R-4 requirement to harbor a single-family home, with 50' effective front / rear yards similar to the Petitioner's lot (6,551 square feet total).

Indiana Administrative Code, in prohibiting zoning discrimination by localities if assigning only specific zoned areas or designated land parcels for manufactured units, would supersede Town of Edinburgh municipal ordinance requiring all single manufactured housing units to be placed in approved manufactured housing parks.

## **STAFF RECOMMENDATIONS**

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Based on the Petitioner's Request; and, the Purpose of Standards, Case History, Considerations, and Town staff analysis incorporated herein, Building & Zoning Department staff recommends **APPROVAL** of the petition in ZB-2017-04-V.

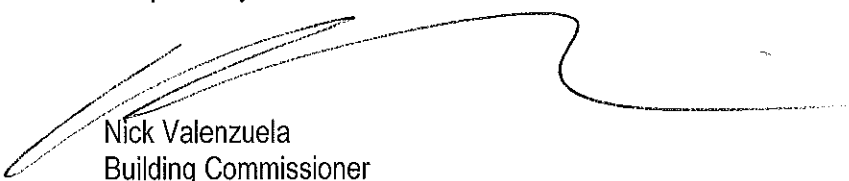
Building & Zoning Department staff recommends that the BZA impose the following conditions on the Petitioner specific to approval of the Development Variances:

1. That the Petitioner install a permanent foundation for the subject manufactured dwelling;
2. That this decision is only granted to the Petitioner, and the Developmental Variance not transferable to any other property owner(s) not directly associated with the Petitioner;



3. That this decision is null and void should the Petitioner fail to develop the subject parcel within two (2) years of the date of the BZA Findings of Fact;
4. That this decision is null and void should the Petitioner fail to receive applicable approvals from all appropriate local, county, and state authorities related to site development for the subject project;
5. That the subject dwelling be compliant with the Building Code of the Town, International Residential Building Code adopted by the State of Indiana, and all other requirements of the Zoning Ordinance; and,
6. That prior to placing and refurbishing the subject dwelling at the subject parcel, the Petitioner submit construction plans to the Town Building Commissioner for review/approval and new permit issuance(s) by the Building & Zoning Department as applicable.

Respectively Submitted,



Nick Valenzuela  
Building Commissioner  
Building & Zoning Department

Notes

*If a Board of Zoning Appeals member has received any relevant information to this proceeding outside of the meeting, they should consider disclosure of such at the beginning of the hearing: i.e. potential ex parte contact (required under Indiana law for BZA members)*

*Indiana Code 36-7-4-909 states that a member of a board of zoning appeals is disqualified and may not participate in a hearing or decision of that board concerning a zoning matter under certain conditions*