

FRANKLIN COUNTY BOARD OF ZONING APPEALS  
AGENDA  
September 6, 2016 @ 6:00pm

- I. Call to Order
- II. Roll Call
- III. Consent Agenda

**Approval of minutes** from [June 7, 2016](#) public hearing.

- IV. Hearing of Cases:

**PETITION of JMB Investment Co., LLC, Applicant; and David L. Maddy, Dan E. Maddy, Dennis W. Maddy and Douglas B. and Betty Lynch Maddy, Owners,** to apply for a Variance to Section 25-339(a), Minimum Yard Dimensions, to allow a front setback of zero (0) foot from the edge of the right-of-way (Iron Ridge Road) rather than the required setback of thirty (30) feet; Variance to Section 25-502.8(2), Required Landscape Yards, to remove the requirement of a minimum landscape yard of twenty-five (25) feet along Route 220 and Iron Ridge Roads; Variance to Section 25-502.9, Overlay Required Landscaping, to remove the required landscaping of the 220 North Mixed Use Overlay District; Variance to Section 25-99, Perimeter Landscaping, to allow grouping of plantings in green space areas; Variance to Section 25-102, Parking Lot Landscaping and Screening, to remove the requirement for interior parking lot landscaping; Variance to Section 25-502.13, Utilities and Screening, to allow utilities to be installed above ground rather than underground as required; and a Variance to Section 25-74, Accessory Structures in Required Yards, to allow a zero (0) foot setback for all accessory structures rather than the twelve (12) foot setback required to allow for the development of a Dollar General Store. The property is currently zoned General Business District (B-2), and is located at 3416 Iron Ridge Road, in the Boone District. The property is identified on Franklin County Real Estate Tax Records as Tax Map # 0440017400. (Case # [VAR-B-16-15403](#))

- V. New Business: **None**
- VI. Old Business: **None**
- VII. Adjourn

# Department of Planning & Community Development



A public hearing of the Franklin County Board of Zoning Appeals was held on June 7, 2016, at 6:00 pm in the Board of Supervisors meeting room located in the Franklin County Government Center.

The meeting was called to order by Mr. Bill Chase, Chairman, at 6:00 p.m. Lori Crouch, Clerk to the BZA called roll.

## **THOSE PRESENT:**

William Chase, Chairman  
Alvin Peters  
Billy Kingery  
William D. S. Lee  
Eric Ferguson  
Wayne Worley  
William Cooper

## **THOSE ABSENT:**

None

## **OTHER'S PRESENT:**

B. James Jefferson, County Attorney  
Terry Harrington, Senior Planner/Current  
Lori A. Crouch, Clerk

A motion was made by William Cooper to approve the March 1, 2016 minutes. The motion was seconded by Mr. Eric Ferguson. The March 1, 2016 minutes of the BZA were approved by unanimous consent.

Case #VAR-5-16-15341, Petition of Atelier 11, Applicant and Wyatt Smith, Owner, to apply for a variance to Section 25-266 (b), side setback to allow an expansion to the existing non-conforming structure. The property is currently zoned Residential (R-1) District and is located at 3306 Kemp Ford Road, in the Union Hall District. The property is further identified on Franklin County Real Estate Tax Records as Tax Map # 0470801500.

Chairman Chase announced the public hearing, and requested Mr. Harrington present the staff report. Mr. Harrington summarized the staff report stating that the existing house was non-conforming due to a deficient side yard setback and that because of its non-conforming status could not be expanded; the house was constructed by a previous owner prior to adoption of zoning in the County. The proposed additions of the house conform to all current setback requirements, and that the approval of the variance to the side yard setback requirement would alleviate the non-conforming status of the house and allow the expansion to take place.

Mr. Harrington further stated that it was the staff's opinion that the variance request generally conformed to state code requirements to grant a variance as presented in the staff report. Mr. Harrington concluded his report by stating that the staff

recommends approval of the variance request, and stated he would try to answer any questions. There were no questions for Mr. Harrington.

Chairman Chase asked if anyone was present who would like to speak at the public hearing. Lauren Dianich, representing the property owner, Wyatt Smith, stated that the addition was relatively small and would conform to all setbacks. She stated that an earlier design, prepared by a different architectural firm, would have violated setbacks, but the owner rejected that design.

Chairman Chase asked if there were any questions for Ms. Dianich. There were none. The Chairman closed the public hearing

Chairman Chase asked why the original property owner would not have known/learned at closing that the house was less than two (2) feet from a side property line. County Attorney Jim Jefferson, and BZA Member Eric Ferguson stated that many older surveys would generally not show the location of a structure on a property, and that unless a structure spanned a property line, a financing company would not be concerned.

Chairman Chase asked if there was a motion. Mr. Bill Cooper moved to approve the variance request per the staffs' recommendation. Mr. Billy Kingery seconded.

Voting on the motion was as follows:

Ayes: Ferguson, Peters, Lee, Worley, Kingery, Cooper, Chase

Nays:

Absent:

Abstain:

With no other business for the Board, the meeting was adjourned at approximately 6:11pm.

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Respectfully,

Lori A Crouch  
Clerk

August 23, 2016  
Date

# Department of Planning & Community Development



To: Franklin County Board of Zoning Appeals

From: Terrance L. Harrington, AICP Senior Planner

Case # VAR-8-16-15403

Date: August 25, 2016

Tax #: 0440017400

District: Boone

Applicant: JMB Investment Company, LLC

Owners: David Maddy, Dan Maddy, Dennis Maddy, Douglas Maddy, Betty Lynch Maddy

## SUMMARY OF REQUEST

JMB Investment Company LLC has requested the following seven (7) variances to the Zoning Ordinance. These variances have been requested to facilitate the development of a Dollar General Store at the Southeast corner of the intersection of Rt. 220 and Iron Ridge Road. The property is zoned B-2 and is currently owned by members of the Maddy Family. JMB Investment is a perspective purchaser of the property. The seven requested variances are as follows:

Variance to Section:	Zoning Ordinance Requires:	Applicant Request:
25-339 (a) Minimum Yard Dimensions	A 30 foot front setback from adjoining r/w.	Allow a zero (0) foot front yard setback from the edge of the r/w.
25-502.8(2) Overlay District Required Landscape Yards	A minimum 25 foot landscaped yard along Rt. 220 and Iron Ridge Roads.	Delete this requirement; Applicant desires zero (0) landscaped yards along the Rt. 220 and Iron Ridge Road r/w's
25-502.9 Overlay District Required Landscaping	Perimeter and interior parking lot landscaping consisting of shrubs and large and small deciduous trees.	Delete this requirement. Applicant desires to remove Overlay District landscaping requirements and comply with less stringent county-wide requirements.
25-99 Perimeter Landscaping	Landscaped yards be at the outer boundaries of the lot or parcel.	Allow Grouping of plant materials in green space areas.
25-102 Parking Lot Landscaping and Screening	Interior parking lot landscaping of a minimum of 5% of entire surface area.	Delete interior parking lot landscaping requirement
25-502.13 Utilities and Screening	Utilities to be installed underground.	Utilities be installed above ground.
25-74 Accessory Structures in Required Yards	Minimum twelve (12) foot setback.	Allow a zero (0) foot setback for all accessory structures.

In addition to the seven variance requests, the applicant also requested (and received) a parking waiver granted by the Board of Supervisors in conjunction with the recent rezoning of this parcel from A-1 to B-2. The waiver allows the applicant to provide 30 parking spaces on the site instead of the 37 spaces required by the zoning ordinance. The Planning Commission recommended denial of this rezoning citing concerns for traffic safety on Route 220, and concern that the proposed development of the site is too intense based upon the size of the lot and the scale of the proposed development. The Board of Supervisors approved the rezoning request on June 21, 2016.

The applicant has also requested that VDOT grant access management waivers pertaining to driveway locations and acceleration and deceleration lanes on Route 220. Those requests are being reviewed by VDOT.

#### **VARIANCE; DEFINITION AND CRITERIA FOR GRANTING**

Section 15.2-2201 of the Code of Virginia defines a variance as follows:

“Variance” means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

Per the Code of Virginia, compliance with one of the two following criteria is required to grant a variance:

**Strict application of the ordinance would unreasonably restrict the utilization of the property, or;**

**The granting of the variance would alleviate a hardship due to the physical condition of the property or improvements thereon.**

In addition, Section 25-773 (2) (a) of the zoning ordinance states that the following five criteria must be met for the BZA to grant a variance:

**The hardship imposed by the ordinance was not created by the applicant (property owner) for the variance; and**

**The granting of the variance will not be of substantial detriment to adjacent and nearby properties; and**

**The variance does not correct a problem or condition that is so general and recurring a nature that a general ordinance amendment is reasonably practical; and**

**The granting of the variance will not result in the establishment of a land use that is not otherwise permitted in the B-2 zoning district; and**

**The relief sought by the variance cannot be achieved thru a rezoning or special use permit process currently authorized by the ordinance.**

#### **STAFF ANALYSIS OF VARIANCE CRITERIA**

The staff's opinion is that the strict application of the ordinance will not unreasonably restrict the use of the property. Seventy-five (75) percent of the developed lots along both sides of Rt. 220 between Iron Ridge Road and Wirtz Road are smaller than the lot proposed for Dollar General. These lots have been developed without the need to apply for and receive seven (7) variances, a parking waiver and access management waivers. These variances and waivers appear to be necessary because the lot is simply not large enough to accommodate the size and scale of the proposed building and parking. The Route 220 Corridor plan identifies the parcel as suitable for commercial

development; however the commercial development should be of a scale and type that conforms to the development regulations adopted by the Board of Supervisors and applied equitably to properties in the Rt. 220 corridor.

The applicant has stated that setback requirements on corner lots result in greater area devoted to required setbacks from public right-of-ways. This corner lot provides greater vehicle accessibility but required setbacks are greater. If the greater setback requirements are a hardship, this hardship appear to be created by the applicant and is self-imposed. The applicant/developer does not currently own the lot, and is proposing to acquire the lot knowing that the proposed development cannot comply with the County's development standards. Variances cannot be granted when hardships are self imposed.

The proposed zero (0) foot setback from Iron Ridge Road is, in the opinion of the staff a safety hazard. Iron Ridge Road provides access to commercial and light industrial type uses, and also serves residents located along Iron Ridge Rd./Wirtz Road communities. School buses currently stop on Iron Ridge to accommodate students that reside on property adjacent to the proposed development site.

There is no practical need for a general ordinance amendment to resolve the development constraints resulting from this proposed site design on this lot. Corner lots throughout the County can and have been developed for residential and commercial uses without the need for waivers or variances. The common characteristic for each of these corner lot developments is that the development scale and intensity complied with the general codes that govern development in the County.

Four of the seven requested variances have been requested because the applicant has chosen a development site that is not large enough to accommodate all of the County's required setback areas. Two of the variances have been requested because the site design does not provide sufficient areas to plant required landscaping. One variance has been requested to allow above ground utilities because the small site may not provide sufficient area for underground utilities while avoiding a well, septic drain field, and underground storm water pipes that will the site.

#### **CONCLUSION AND RECOMMENDATION**

The staff recommends that the variance requests be **denied**. Application of the County's adopted zoning standards will not unreasonably restrict the use of this property, and any development hardship that may exist is self imposed, as the applicant does not own the land and is proposing to acquire the property knowing that variances are necessary to accommodate the desired site design and intensity.

The Board of Zoning Appeals can choose to approve all requested variances, deny all requested variances, or approve any portion of the requested variances. Also, the Board can impose conditions regarding the location, character, and any other features of the proposed structure or use as it may deem necessary in the public interest.

A concurring vote of four (4) members of the Board shall be necessary to effect and variance from the zoning ordinance.

**SUGGESTED MOTIONS:**

The following suggested motions are sample motions that may be used.

- A. Based upon the fact the applicant has not demonstrated the variance criteria identified in Section 15.2-2309 of the Code of Virginia have been met, *I move to deny the requested variances.* (State any supporting findings)

**OR**

- B. Based on the fact the applicant has demonstrated the variance criteria identified in Section 15.2-2309 of the Code of Virginia have been met, *I move to grant the requested variances* (State any supporting findings)

**OR**

- C. Based upon the following findings [state], *I am entering an alternate motion [state].*