

Minutes - Goshen Board of Zoning Appeals  
Tuesday, June 25, 2019, 4:00 p.m.  
Council Chambers, 111 E. Jefferson Street  
Goshen, Indiana

- I.** The meeting was called to order with the following members present: Aracelia Manriquez, Richard Aguirre, Brad Hunsberger, Scott McKee, and Tom Holtzinger. Also present was Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus.
- II.** Approval of Minutes from 5/28/19: Aguirre/Hunsberger 5-0 with the following correction to page 4: The following statement “Attorney Kolbus stated the Board could grant an easement to her to permit the patio encroachment” should be changed to read “Attorney Kolbus stated the Board could accept an easement to permit the patio encroachment.”
- III.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Hunsberger/McKee 5-0
- IV.** Postponements/Withdrawals: None
- V. Use & Developmental Variances** – public hearing item  
**19-13DV** – Al & Brenda Maurer request a developmental variance to allow a 6’ privacy fence where a maximum of 4’ is permitted in the front yard setback along Wilden Avenue. The subject property is generally located at 422 W Wilden Avenue and is zoned Residential R-2 District.

*Staff Report:*

Mr. Deegan explained that in April, the petitioner began building a 6’ fence along his east property line to screen it from the adjoining neighbor. The fence was installed without Planning review and when discovered, the owner came to the Planning Office for approval. At that time, it was determined that a portion of the 6’ fence was located within the front yard setback, where a maximum height of 4’ is permitted. The setback along this portion of Wilden Avenue is 35’ and the fence was placed approximately 13’ from the right-of-way and in line with the front of the house. The petitioner stated he was not aware the fence was not in compliance with the zoning ordinance.

Aerial views of this and surrounding properties show small front yards. Mr. Deegan stated that allowing a 6’ fence within the front yard setback and in line with the front wall of the house will not impede open space or visibility.

Staff recommends approval of the request.

*Petitioner Presentation:*

Albert Maurer, 1305 E Lincoln Avenue, spoke on behalf of the petitioner. He stated he was replacing a previous fence and didn’t know he needed Planning approval. He stated the fence is 6’ in height to help hide the neighboring property. He pointed out other properties in the neighborhood have 6’ fences and assumed this was okay.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Holtzinger stated he feels this fence looks okay.

Mr. Hunsberger stated he feels starting this fence at the front of the house is reasonable.

*Action:*

A motion was made and seconded, Hunsberger/Aguirre, to find with the recommendations and conclusions of the Staff Analysis and approve 19-13DV with the four conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**19-14DV** – Galen R. Miller requests a developmental variance to allow a substantial repair/improvement for a residential dwelling without bringing the house into compliance with flood protection grade (FPG). The subject property is generally located at 111 Huron Street, is zoned Residential R-3 District, and is located in Zone AE fringe.

*Staff Report:*

Mr. Deegan explained this property is located within a residential neighborhood and also in Zone AE Fringe which is part of the Special Flood Hazard Area. He explained that Zone AE is the portion of the Special Flood Hazard Area that has a 1% chance of flooding in a given year. This area is regulated by FEMA as part of the National Flood Insurance Program. He explained that per the zoning ordinance, structures located within the AE Fringe undergoing substantial improvements or construction, must be brought into compliance with flood protection grade (FPG). FPG requires that the lowest floor of the structure must be a minimum of 2' above the base flood elevation. The zoning ordinance also requires the BZA to hear and approve the request for any variances.

He explained that following the 2018 flood, the City evaluated properties impacted within the flood area and discovered that the owner of this property was making improvements to the home without Planning approval. The majority of the improvements were to rooms on the first floor and included new drywall, ceiling, windows, a bathroom expansion, wiring, etc. Long-term plans include replacing roof shingles and the addition of a deck, but because the deck is unenclosed and uncovered, it will not be part of today's decision. He explained the cost estimate for flood damage repair and the improvements exceed 50% of the value of the structure and is considered a substantial improvement, requiring the property to be brought into compliance with the FPG in order to make the improvements. He pointed out that to come into compliance, the owner would have to fill in the basement and raise the lowest floor to two feet above the base flood elevation, which would be cost prohibitive.

Staff finds the request reasonable and recommends approval.

*Petitioner Presentation:*

Galen Miller, 111 Huron Street, spoke on behalf of the petitioner. He stated he is familiar with the Staff analysis and has nothing to add.

*Audience Comments:*

Allen Robinson, 109 Huron St, spoke in support of the petition. He stated he supports this request and asked the Board to approve the variance.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre asked Mr. Deegan if he's aware of any homes that have had to fill in the basement and raise the main level.

Mr. Deegan stated he is not aware of any properties that have had to do this. He went on to say that any new development would be required to meet the requirements.

Mr. Hunsberger asked Mr. Deegan if his recommendation would be different if this was in the floodway and not the fringe.

Mr. Deegan responded that if this property was on the margin of any kind of development or closer to the heart of the floodway, it might be different. He noted that municipalities across the country are discouraging development in flood prone areas. Because this is in the heart of a residential neighborhood, and houses around this property are remaining, it would be difficult not to support this request.

Mr. Aguirre asked if the City is looking at development in flood prone areas differently since the 2018 flood. Attorney Kolbus stated we are bound by FEMA maps and they were last updated 7 or 8 years ago.

*Action:*

A motion was made and seconded, Aguirre/McKee, to find with the recommendations and conclusions of the Staff Analysis and approve 19-14DV with the three conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**19-16DV** –AJM Development, LLC requests a developmental variance to allow a parking/driving aisle setback of 20' where 60' is required adjacent to residential use or zoning. The subject property is generally located at 1927 E Monroe Street and is zoned Industrial M-1 District.

*Staff Report:*

Mr. Deegan explained this industrial zoned property contains an auto repair business and is surrounded by a variety of zoning districts, including residential zoning to the east. He explained that in June, 2013 the petitioner submitted plans for a number of improvements to the existing building and property. Among those improvements were street trees and stormwater improvements. These items were approved by the Planning office, but a large portion of the proposed parking and access drive was to be constructed in a parcel still under the jurisdiction of Elkhart County. At the time of the 2013 approval, it was anticipated that the property would soon be annexed into the City of Goshen, but the parcel wasn't annexed until December, 2018. The two street trees required as part of the approval have not been planted. He explained the proposed parking/driving aisle is to be used to maneuver vehicles in and out of the service building. The existing gravel surface was not approved by the City of Goshen and it's unclear if it received approval from Elkhart County, but the petitioner has stated they want to convert this to hard surface. He explained this parking/driving aisle will have an approximate 20' setback where 60' is required adjacent to residential use or zoning.

Because the site does not have adequate space for parking and maneuvering elsewhere, Staff finds the request reasonable. Staff does have concerns about future development of the property to the east and because it could be developed for residential use, the reduced setback on the property should be screened. Because the auto repair use is less intense than most industrial uses, Staff feels partial landscaping would be appropriate. Staff recommends approval with conditions and commitments.

*Petitioner Presentation:*

Brad Plett, 1927 E Monroe Street, spoke on behalf of the petitioner. He stated that since they have now been annexed, they are ready to install hard surface. He explained they tried to purchase additional property from the fairgrounds, but they are unwilling to sell. He stated they understand the required buffer and are in agreement. He noted the two required trees have been scheduled with a landscaper and they hope to have them planted by the end of the month.

Mr. Aguirre asked Mr. Plett if he's aware of any intention to develop the property to the east. Mr. Plett stated it's owned by the fairgrounds and is currently used for parking during the fair.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

There was no discussion amongst Board members.

*Action:*

A motion was made and seconded, Hunsberger/Aguirre, to find with the recommendations and conclusions of the Staff Analysis and approve 19-16DV with the four conditions and one commitment listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**19-03UV & 19-15DV** – Kevin & Jeannie Koch and J. William Davis Jr. request a use variance to amend 05-19UV to eliminate professional offices from the list of permitted uses, a developmental variance to amend 18-01DV to allow 8 onsite parking spaces where 15 onsite parking spaces are required, and to allow the existing freestanding sign on Washington Street to remain. The subject property is generally located at 125 S 6<sup>th</sup> Street and is zoned Residential R-1 District.

*Staff Report:*

Mr. Deegan explained there are several parts to this request. The first request is to amend variance 05-19UV to eliminate professional offices from the list of permitted uses which allowed a counseling office in the west portion of the building. The petitioner proposes the expansion of the sewing/tailoring/embroidery business in the former counseling office. The sewing business use was granted by the BZA in 2018 and while expansion of the use within the building does not require BZA approval, it will affect the required onsite parking so the second part of this request is to amend the parking. He explained the existing residential use in the west part of the building will require 2 spaces, with the expanded sewing business requiring 13 spaces, for a total of 15 required spaces.

He explained when this variance was approved in 2018, the petitioners demonstrated they could provide 9 onsite parking spaces. He noted that without Planning approval, they recently constructed a delivery door on the west side of the building which will eliminate one parking space, leaving 8 available onsite spaces. He pointed out within 300' of this property there are two public parking lots, with over 100 spaces, and some spaces are regularly available. He also pointed out this property is directly adjacent to the Commercial B-2 zoning district where no onsite parking spaces are required for commercial use. He noted Staff has concerns that if the number of employees or the sales/display area increases, the additional parking spaces being used may adversely affect neighboring properties. Staff recommends approval of this request with the commitment that the number of employees for the sewing use does not exceed 7 and the sales/display area does not exceed the area as shown on the plans submitted for this approval.

The last part of this request is to allow the two externally lit signs, located in the right-of-way adjacent to the property to remain. As part of the 2018 BZA variance request, the petitioner requested to keep both signs and Staff had recommended the removal of both non-conforming signs. In their decision, the BZA amended the request to allow the sign on 6<sup>th</sup> Street to remain and required the removal of the Washington Street sign. To date, the Washington Street sign has not been removed and they now request that 18-01DV be amended to allow the Washington Street sign to remain. He pointed out Staff has no objection to allowing one sign to remain as the previous BZA decision permitted and also has no objection to allowing the sign along Washington Street to remain in place of the sign along 6<sup>th</sup> Street. Staff recommends a commitment stating the sign can only be refaced and that no structural changes to the sign are permitted.

Mr. Deegan outlined the commitments the Planning Staff has included, along with Staff's recommendation for approval.

Mr. Holtzinger asked what happened to the 6<sup>th</sup> Street sign.

Mr. Deegan stated it's still there, but it's his understanding the 6<sup>th</sup> Street sign will be removed and the Washington Street sign will remain. He also noted that is Staff's recommendation.

*Petitioner Presentation:*

Bill Davis, 116 E Clinton Street, spoke on behalf of the petitioner. He stated he feels there might be confusion about this request and gave the following overview. He explained that the first part of this request is to modify 18-01DV to allow an existing freestanding sign to remain along Washington Street, stating the petitioner would like to keep both signs if possible. Secondly, they ask to modify 05-19UV and 18-01UV to eliminate the professional offices and to expand the sewing/tailoring/embroidery business into the area where the counseling business was. He provided a handout Exhibit 19-03UV & 19-15DV #1 which shows the residential and showroom area. He explained the area previously used for a counseling center will now be utilized as offices for this business. The work area will remain in the basement. He pointed out Staff has no objection to eliminating the professional office use and there is no reason to modify 18-01UV to accommodate the expansion. He stated because the counseling business is gone, their calculations indicate they now have the required number of onsite parking spaces. He explained that Kevin & Jeannie Koch live in the residence and also work in the business. In addition to the Koch's, they have four employees and one additional employee that floats between this and two other Koch owned businesses. He noted the sales and display area will remain at 450 sf. Based on this information, it was determined that 7 parking spaces are required for the property and 8 spaces are available onsite. Mr. Davis provided a handout Exhibit 19-03UV & 19-15DV #2 showing the petitioner's parking calculations. He also referred to the parking diagram at the bottom of Exhibit 19-03UV & 19-15DV #1 showing that there is plenty of parking on and near the property. Mr. Davis explained the new door on the west side of the building will not be used to drive into the building, but a larger space to bring in larger materials such as bolts of cloth or sewing machines. It's anticipated that the delivery door will be used once every couple weeks or as infrequently as once per month. He asked that the commitment not include a limitation on the number of employees because the parking requirements are controlled by the zoning ordinance. He stated its understood if they want to increase the number of employees and don't have adequate parking, a variance will be required.

Mr. Davis stated these signs have been an acceptable part of the neighborhood for many years and asked that both signs be allowed to remain. He went on to say both signs are illuminated, but there will be very little ambient light. It's anticipated the signs would only be illuminated in the evenings as part of First Friday or other community events. He stated if these signs interfere with future projects, they can be addressed at that time and asked that they be allowed to keep both freestanding signs.

Mr. Holtzinger asked if these signs have always been illuminated.

Mr. Davis stated he's not aware that they've ever been illuminated.

Mr. Aguirre asked Mr. Davis if he has a response regarding the limitation on the number of employees.

Mr. Davis stated he needs to understand how the parking requirements are calculated.

Attorney Kolbus pointed out Staff is recommending approval of the developmental variance and doesn't understand the concern regarding parking. He pointed out if the Koch's no longer live onsite, but continue to work there, Staff is attempting to ensure parking requirements are met.

Mr. Davis stated the ordinance controls how many employees will be allowed without the need for a parking variance.

Mr. Deegan stated the recommendation for limiting the number of employees was because of the parking issue it would create. He went on to say with the new information that has been presented, 8 parking spaces are required and 8 spaces are available. Parking requirements are met.

Mr. Deegan went on to say that Staff recommended the removal of both freestanding signs when this variance request was heard in 2018, but the BZA allowed the sign along Washington Street to remain. Today's recommendation is based upon the fact that the BZA approved one sign for the property in 2018. He noted that Staff has no concerns regarding which sign is allowed to remain, pointing out that illuminated signs are not

permitted in residential areas and that only unlit ground signs are permitted. Staff recommends that the sign not be illuminated.

*Audience Comments:*

Jeremy Stutsman, 202 S 5<sup>th</sup> Street, spoke in support of the petition. He stated this property is on the edge of the central business district, where businesses are not required to have parking spaces and there are no regulations on the number of employees. He stated these regulations might be important in other areas of the City, but with the availability of City parking lots, he doesn't feel parking is an issue. He supports this request and is in favor of allowing both signs to remain. He also supports removing the limitation on the number of employees,

Kevin Koch, 125 S 6<sup>th</sup> Street, spoke to the petition. He stated the intention is to add wording to the existing freestanding signs about the artisan district which is why they want to keep both signs. He noted the lighting for the signs is provided by 60 watt bulbs.

Mr. Aguirre asked Mr. Koch to respond to comments regarding the number of employees.

Mr. Koch stated they hope to grow the business and while they don't want to add too many employees, they don't want to limit the number of interns. He explained they regularly have fashion interns and isn't clear if they would be counted as employees.

Chris Russell, 64799 Orchard Drive, spoke in support of the petition. He stated he is a landlord, owning several properties in the area. He stated since Kevin has purchased this property, he has taken good care of it and it is an asset to the neighborhood. He has no concerns about the signs.

Elijah Durnell, 302 S 6<sup>th</sup> Street, also spoke to the request. He stated he supports this request.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre asked if this business is one of a few in the downtown that has a limit on the number of employees.

Mr. Hunsberger pointed out this is different because this property is located in a residential zoning district.

Attorney Kolbus stated that in the past the BZA has set limits on the number of employees a business can have.

He noted the recommendation from Staff is that the number of employees not exceed seven, but they can add the words "at this location", and that would give them an additional two employees for future growth.

Mr. McKee asked if this would include part-time employees.

Attorney Kolbus stated he's not sure the Board wants to get into that, explaining they could have 7 full time employees and 10 part-time or seasonal interns which could potentially cause parking concerns.

Mr. Deegan stated if this were to happen, it would be best to return to the BZA to amend the variance.

Mr. Aguirre asked for clarification on replacing a non-conforming sign if it is damaged.

Mr. Deegan stated if a non-conforming sign is damaged it cannot be replaced without returning to the BZA for permission.

*Action:*

After Board discussion, Mr. Aguirre stated he would like to make a motion to adopt the Staff recommendations, but would like to amend as follows:

- Amend commitment #1 to delete the maximum employee requirement
- Dismiss the developmental variance regarding parking because it is unnecessary
- Allow both freestanding signs to remain

A motion was made and seconded, Aguirre/McKee to find with the recommendations and conclusions of the Staff Analysis and approve 19-03UV & 19-15DV with the following conditions and commitments:

*Conditions:*

1. The variance shall become null and void unless a building permit has been issued and substantial progress has been made within six (6) months of the date of the BZA approval.
2. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.
3. The City of Goshen Board of Zoning Appeals approval shall be effective when the executed and recorded Results/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff.
4. No zoning clearance form will be issued until the executed and recorded Results/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff.
5. An approved zoning clearance form is required for the wall opening and interior business expansion.
6. All signs, permanent and temporary, shall be submitted to the Planning office for review and approval.

*Commitments:*

1. For the sewing, tailoring, and embroidery business, the sales and display area shall not exceed that shown in the plans “Koch House of Design – 1<sup>st</sup> Floor” submitted as part of this variance application.
2. The existing freestanding signs on Washington Street and 6<sup>th</sup> Street may both remain, but shall not be structurally altered in any way; only re-facings of the signs shall be permitted.

The motion passed unanimously by a vote of 5-0

**VI.** Audience Items:  
None

**VII.** Staff Board Items:  
None

**VIII.** Adjournment: 5:10 p.m. Hunsberger/Aguirre

Respectfully Submitted:

/s/ Lori Lipscomb  
Lori Lipscomb, Recording Secretary

Approved By:

/s/ Tom Holtzinger  
Tom Holtzinger, Chair

/s/ Richard Aguirre  
Richard Aguirre, Secretary