

Minutes - Goshen Board of Zoning Appeals
Tuesday, September 24, 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: Richard Aguirre, Aracelia Manriquez, 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 8/27/19: Aguirre/Hunsberger 5-0
- III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Hunsberger/Aguirre 5-0
- IV. Postponements/Withdrawals: None
- V. **Use & Developmental Variances** – public hearing items
19-05UV & 19-26DV – Mateer Rempel Properties, LLC, requests an amendment to 04-10UV and 04-23DV to allow a total of 6 offices and 8 employees where 2 offices and 5 employees are permitted, and to allow 6 parking spaces where 10 are required. The subject property is generally located at 113 E Madison Street and is zoned Residential R-3 District.

Staff Report:

Mr. Deegan explained this Residential R-3 property is close to downtown and surrounded by a variety of uses and zoning. He noted there have been a number of use and developmental variances for this property over the past several years. Those variances include a 1995 approval for an 80 sf shed, located in the front and side setbacks, and a 1996 use variance to split the property for an art gallery and residence, along with a variance to allow a professional office in place of the art gallery. The variance required that the property owner occupy the office/gallery and the number of additional employees was limited to one.

In 2004, both use and developmental variances were granted for multiple professional offices, seven onsite parking spaces where 11 were required, and an additional 24 sf freestanding sign. Conditions and commitments were part of the 2004 approval and allowed no more than two professional offices and five employees and limited the number of possible office uses to 18, with a provision that similar uses would be allowed.

Today's request is to amend the 2004 approval to allow professional offices. Currently the building has two offices on the first floor and the petitioner would like to use both floors to allow a total of 6 small offices and 8 employees. This request would require 10 onsite parking spaces where 6 are adequately provided. The petitioner requested limiting the number of appointment based businesses to 3 and has suggested a number of uses appropriate for single employee offices with limited cliental. He pointed out the property is surrounded by multiple uses and that parking will continue to be accessed from Madison Street. Staff feels a limited expansion of the number of offices and employees is reasonable, but noted that future street parking is a concern, especially along S 5th Street and anticipates it would likely be used by additional employees. He also pointed out there are no nearby public parking lots and that several nearby properties have parking variances which might create an demand for parking along 5th Street. He noted a variance for the nearby Art School has 7 onsite parking spaces where 51 spaces are required, and a bed and breakfast approved earlier this year has 5 onsite parking spaces where 8 are required.

Mr. Deegan stated that Staff recommends a cautious approach to relieving parking requirements and discussed the recommended professional office uses listed in the Staff Report. He pointed out Staff recommended the total number of offices serving clients on the property shall not exceed two and client visits shall be by appointment only. Staff feels this would help limit the number of people showing up to an office.

Petitioner Presentation:

Nate Mateer Rempel, 410 Cross Street, spoke on behalf of the petitioner. He stated they would like approval for three appointment based businesses because he feels there are an additional two parking spaces on the site, located in, or behind the garage. He stated that previously an accountant was able to coordinate these spots and would like this to be taken into consideration. He asked that the Board approve his request for three appointment based businesses.

Mr. McKee asked if Mr. Rempel had talked to the church across the street about using their parking.

Mr. Rempel stated he is investigating that, but cannot guarantee that it would be an option.

Mr. Holtzinger noted his concern is the parking, pointing out that Madison is a very busy street.

Mr. Rempel stated he understands the concerns, but there are already two appointment based businesses there and he feels asking for a third would not be a big change.

Mr. Aguirre asked how the total number of employees would be managed.

Mr. Rempel stated they would just have to limit the number of people there to eight.

Mr. Deegan pointed out that unless complaints were received by the Planning Office, the number of employees would have to be monitored by the property owner.

Mr. Aguirre asked Mr. Rempel if the list of permitted professional office is reasonable.

Mr. Rempel stated he and Staff compiled this list and he is satisfied with the results.

Audience Comments:

None

The public hearing was closed.

Staff Discussion:

Mr. Aguirre questioned commitment number five of the staff report which states “the total number of offices which serve clients on the subject property shall not exceed two and the client visits shall be by appointment only”. He asked Mr. Deegan to explain his reasoning for recommending only two appointment based businesses and not three as requested by the petitioner.

Mr. Deegan stated there are two existing appointment based businesses and this is a residential area. He noted if the additional office space works out with no problems, allowing an additional appointment based business could be revisited at a later date by requesting an amended variance from the BZA.

Action:

A motion was made and seconded, Hunsberger/Manriquez, to find with the recommendations and conclusions of the Staff Analysis and approve 19-05UV & 19-26DV with the four conditions and seven commitments listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

19-06UV – Crimson Rental Group, LLC, and Happy Tails Pet Grooming Salon and Hotel request a use variance to allow permanent approval of 17-10UV, to permit a kennel with outside run with setbacks of 0' (north) where 100' is required, 8' (west) where 300' is required, and 25' (south) where 300' is required for the outside run; and

15' (north) where 100' is required, 63' (west) where 300' is required, and 45' (south) where 300' is required for the building, not meeting the Conditional Use setback requirements of 100' (to adjacent non-residential property lines) and 300' (residential zoning district boundaries). The subject property is generally located at 1503 Fairfield Avenue and is zoned Commercial B-3 District.

Staff Report:

Mr. Deegan explained this request is for a dog kennel business that shares a single zoning lot with two other businesses. He noted the Park 33 apartment complex is across Fairfield Avenue to the south, with a church to the west and a commercial use to the north. In 2017, the BZA approved a use variance for a kennel with an outside run. The variance was required because kennels are a conditional use in the B-3 and the property could not meet the setbacks required for the conditional use. A commitment was included which required the petition to be reheard by the BZA at the end of two years. He explained that when the original variance was granted, it was in part because the petitioner advised the dogs are not kept outside and when outside, they are on a leash at all times. The petitioner has advised that there will be no changes to this approval. Mr. Deegan pointed out some of the reasons for approval were that the kennel use is consistent with surrounding uses and is approximately 75' to the closest residential use. He also noted that this location is ideal for dog owners that would like access to this service.

Mr. Deegan stated the original approval was for two years because the Park 33 apartments were in site plan development and no apartments had been constructed. The complex has now been constructed and apartments are occupied. Because the kennel has operated for two years and there have been no complaints, Staff recommends permanent approval of this request.

Petitioner Presentation:

Sherry Anderson, 1610 S 14th Street, spoke on behalf of the petitioner. She stated she is familiar with the Staff recommendation and has nothing to add.

Mr. Aguirre asked if dogs are permitted in the Park 33 apartments.
Ms. Anderson stated yes and that a number of their clients live there.

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, Aguirre/Hunsberger, to find with the recommendations and conclusions of the Staff Analysis and approve 19-06UV with the three conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

19-27DV –DH Properties, LLC, and Mid-States Construction, Inc., request developmental variances to allow a 79' (west) side building setback, where 100' is required adjacent to residential use or zoning, for a 3,000 sf building addition, and to allow the property to be served with an existing septic system where hookup to City sewer is required. The subject property is generally located at 2301 W Wilden Avenue and is zoned Industrial M-1 District.

Staff Report:

Mr. Deegan explained this property is a packaging and janitorial product supplier, located on the north side of W Wilden Avenue. Industrial properties are located to the east and southeast with residential properties located to the west and south. He explained the rear of the property is located along the Elkhart River with a small portion of the north end located in the AE Fringe and floodway.

Today's request is to allow the warehouse construction without requiring connection to City sewer. The property is currently served by septic only and the petitioner would like to continue without connecting to City sewer. The property slopes downward making connection to City sewer difficult and costly, but because a sewer main runs adjacent to the property on Wilden Avenue, it's reasonable that this property should connect to City sewer. The Engineering Department has also advised that a grinder pump can be installed to move the sanitary waste from the building to the sewer, noting that such pumps are common for similar properties within the City.

The Planning Staff recommends denial of the request to continue using septic and not connect to City sewer.

A survey of the property has not been obtained, but the proposed addition will be located approximately 81 feet from the west property line. In addition to asking for permission to continue using septic, the petitioners also request a 79' setback adjacent to residential use where 100' is required for the building addition. Mr. Deegan stated that given the layout of the property, the proposed 79' setback is reasonable, noting there is no room to expand the building to the east. He also noted the existing building has an 85' setback to the west property line where 100' is required.

Staff recommends approval of the relaxed setbacks, based upon the petitioner fulfilling the rest of the zoning ordinance requirements as detailed in Technical Review. He went on to say that during the Tech Review process, it was explained that full bufferyard landscaping is required between the industrial and residential uses. The petitioner has stated they will meet the landscape requirements, but have not submitted a landscape plan for review. It's unclear if the petitioner can meet the full bufferyard requirements and they have been advised they will have to file for a variance if the requirements cannot be met.

Petitioner Presentation:

Jim Ulery, 51205 Maplewood Drive, Elkhart, spoke on behalf of the petitioner. He stated there is one full time employee, two part-time drivers that are seldom in the building, and occasional truck drivers dropping off shipments. He noted there is one bathroom with a stool and sink, along with a coffee bar. He pointed out there is no showroom and there are no walk-in customers. He discussed that grinder pumps are not always reliable and the high cost of installation and feels this is an unnecessary hardship on his client and asked that the Board approve construction without the need to connect to the City sewer.

Tom Stump, 823 S 7th Street, owner of Cripe Septic, also spoke on behalf of the petitioner. He stated he has pumped this tank several times, noting it was last pumped in 2014 or 2015 and that the system functions properly.

Mr. Ulery commented that the survey has been ordered, but they have not had time to review. They feel the setback is 81', but have asked for a setback of 79' to use as a buffer. He stated the owner wanted a larger building, but this is the maximum for this lot.

Mr. Holtzinger asked if they plan to install the bufferyard landscaping.

Mr. Ulery stated there is not a berm, but they feel the existing trees are more than adequate for this site. He stated the existing landscaping will be reflected on the landscape plan that's being prepared. He also stated they plan to return to the BZA with a landscape plan to ask for a variance.

Mr. Deegan noted the landscaping was not included as part of today's variance request. If the requirements are not met, they will return to the BZA with a new variance request for the landscaping. Today's hearing is to discuss setbacks and septic only.

Mr. Stump stated the septic tank works and he doesn't understand the City's requirement that the owner connect to sewer. He stated that under the circumstances, this septic will last a long time. He feels this is a lot of money for something that's not needed and pointed out if there were multiple people working here or if the septic failed, connection to sewer would be reasonable.

Audience Comments:

Dave Coyne, 2307 W Wilden Avenue, spoke to the petition. He stated he lives next door to this property and has no concerns with the reduced setback.

The public hearing was closed.

Staff Discussion:

Mr. Hunsberger asked if the BZA can require review the septic if the property is sold. He pointed out that while there is currently one person at this business it could be sold and the next owner might have multiple employees.

Attorney Kolbus stated he isn't sure that would be legal.

Mr. McKee asked if it could be addressed if the septic failed.

Attorney Kolbus stated the Board could add a commitment that in the event the number of employees reaches a certain number, they would then be required to connect to City sewer.

Mr. Deegan stated no official documents have been provided to the Planning Office regarding the condition of the septic. He pointed out the Elkhart County Health Department keeps records for any permits and recommended that if permits or review is required by Elkhart County, that it be done before a zoning clearance is signed by the Planning Office.

Mr. Holtzinger pointed out if the septic fails, they would need a permit from the Health Department and that's the time to tell them they need to connect to City sewer. He noted he also supports requiring connection to sewer if the number of employees increases to a certain number.

Mr. Deegan stated that the zoning ordinance requires connection to City sewer, pointing out that this time last year the BZA denied a request for a residential property that did not want to connect to City water, which is also a requirement.

Mr. Holtzinger agreed, but pointed out that the BZA has also granted exceptions in the past.

Mr. Deegan noted the only recent incidences he recalls are the airport property where no main is available and the Keystone shipping yard which does not have an available sewer line. He pointed out that City sewer runs directly in front of this property and feels this ordinance requirement is reasonable. He pointed out this is also supported by Goshen Engineering.

Action:

A motion was made and seconded, Holtzinger/Hunsberger, to accept the findings of the Board and approve 19-27DV with the following conditions and commitments:

Conditions:

1. If a Building permit is required, 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 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 BZA approval shall be effective when the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff and when all conditions of approval have been met.
4. No zoning clearance form will be issued until the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff and until all conditions of approval have been met.
5. All developmental standards other than the reduced west side building setback shall be met.
6. An approved zoning clearance form following completion of Technical Review is required.

Commitments:

1. If the variance is not implemented and expires, this Commitment automatically terminates as well, and the Zoning Administrator may execute and record a Termination of Commitment on behalf of the City of Goshen Board of Zoning Appeals.
2. The present septic sewer system is permitted to remain until it fails or until the total number of employees/staff on site on a daily basis exceeds five (5), whichever occurs first, at which time connection to City sewer is required.

The motion passed unanimously by a vote of 5-0.

VI. Audience Items:
None

VII. Staff Board Items:

- *313 ½ N 8th Street, Commitment Termination Request*

Mr. Deegan explained we have a request to terminate 13-08UV which was approved by the BZA for a woodworking shop in an R-2 zoning district. The commitment (#2013-22768) was recorded, but the woodworking shop was never implemented and has now expired. Mr. Deegan asked for a motion to terminate this commitment form.

Action:

A motion was made and seconded, Hunsberger/Aguirre, to terminate Commitment 2013-22768 for 313 ½ N 8th Street. The motion passed unanimously by a vote of 5-0.

- Mr. Deegan advised Board members that going forward, BZA approvals that require commitments will have a new commitment added to the form which states if the variance is not implemented and expires, the commitment will automatically terminate. This will allow commitment terminations to be handled administratively and will not require action by the BZA.

VIII. Adjournment: 5:00 pm Aguirre/Hunsberger

Respectfully Submitted:

/s/ Lori Lipscomb

Lori Lipscomb, Recording Secretary

Approved By:

/s/ Tom Holtzinger

Tom Holtzinger, Chair

/s/ Richard Aguirre

Richard Aguirre, Secretary