

Minutes - Goshen Board of Zoning Appeals
Tuesday, January 28, 2020, 4:00 p.m.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

I. The meeting was called to order with the following members present: Allan Kauffman, Richard Aguirre, Tom Holtzinger, and Scott McKee. Also present was Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus. Absent: Aracelia Manriquez

II. 2020 Board of Zoning Appeals Appointment

- *Richard Aguirre – Appointment by Mayor, reappointed 01/01/20-12/31/23*
- *Allan Kauffman – Appointment by Mayor, appointed 01/01/20-12/31/23*

III. Election of Officers for 2020:

- A motion was made and seconded, Aguirre/McKee to re-appoint Tom Holtzinger as Chair.
- A motion was made and seconded, Aguirre/Kauffman to appoint Scott McKee as Vice-Chair.
- A motion was made and seconded, Holtzinger/McKee to appoint Richard Aguirre as Secretary.

The motions passed unanimously by a vote of 4-0.

IV. Approval of Minutes from 11/26/19: Aguirre/McKee 4-0

V. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Aguirre/McKee 4-0

VI. Postponements/Withdrawals: None

VII. Use Variance – public hearing item

20-01DV – Goshen Theater, Inc. requests a developmental variance to allow flashing lights on a marquee sign in the Historic Commercial District (HD) where flashing lights are not permitted. The subject property is generally located at 216 S Main Street and is zoned Commercial B-2 HD.

Staff Report:

Mr. Deegan explained this is the Goshen Theater, located in the Historic Downtown District, surrounded by a mix of commercial businesses with some residential uses on the second floor of a number of buildings. Today's request is for the marquee sign on the front of the building and whether two of the corner panels can have flashing lights. He explained that the Historic Commercial District sign regulations adopted in December, 1999 prohibit illuminated signs from flashing. Flashing bulbs were recently installed on two corner panels of Goshen Theater's sign without Planning approval and the petitioner stated they believe the lights have been flashing for the past 71 years. Planning has no record or knowledge of the flashing lights, but supports this request, noting that the corner panels are relatively small and from a block away, the sign doesn't appear to take up a lot of visual area.

Petitioner Presentation:

Julia Gautsche, 601 S 7th St, spoke on behalf of the petitioner. She stated they support the Staff's recommendation, noting they would like to make a change to condition number four of the Staff Report which currently states in part that "flashing lights shall be restricted to the two corner panels of the existing marquee sign only". She stated she would like to add that the flashing lights will be restricted to the two corner panels of the existing marquee, in addition to chasing lights. She stated the sign was designed with chasing lights on the top and bottom of the marquee, but these light have been broken and the bulbs have not been replaced. She asked that these chasing light be allowed in addition to the flashing lights.

Attorney Kolbus noted for the record that the request is for flashing lights on the marquee and because the request was not specific when advertised this could be included in today's discussion and decision.

Ms. Gautsche stated no work has been done internally or externally to this sign and it remains as it was in 1948. The hail storm in June, 2019 broke a number of bulbs which have now been replaced with LED lights. She went on to say the downtown business owners are in favor of the lighted sign and are also lighting their storefronts as a way to welcome people downtown. She noted the sign will be lit from dusk until 11:00 pm or 12:00 am. The sign will not be lit during the remainder of the night.

Mr. Kauffman asked if the chasing and flashing lights can be operated independently.

Ms. Gautsche stated that is happening now.

Mr. Kauffman asked if they have found anyone that remembers the lights flashing in years past.

Ms. Gautsche stated the sign is designed that way and it's never been changed.

Jerry Peters, 103 W Washington Street, Suite 1, also spoke to the petition. He stated the chasing lights and flashing lights are on separate circuits.

Mr. Aguirre asked if the lights would be on every night.

Ms. Gautsche stated the Economic Improvement District (EID) would like the lights on every night, noting this request came from the downtown business owners.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Aguirre asked Mr. Deegan how Staff feels about the chasing lights.

Mr. Deegan stated he feels it fits in well and has no concerns.

Action:

A motion was made and seconded, Aguirre/McKee, to find with the recommendations and conclusions of the Staff Analysis and approve 20-01DV with the following 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. An approved zoning clearance form is required.
4. Flashing and chasing lights shall be restricted to the 2 corner panels and the top and bottom of the existing marquee sign only. All other changes to the marquee require review by the Planning office.

The motion passed unanimously by a vote of 4-0.

20-02DV – Jim & Karen Wellington request a developmental variance to allow a 2' front yard setback along West Waverly Avenue where 25' is required for a 10' x 20' (200sf) three-sided animal shelter. The subject property is generally located at 310 W Waverly Avenue and is zoned Agricultural A-1 District.

Staff Report:

Mr. Deegan explained this property is located on Waverly Avenue, west of the canal, and contains approximately 10.65 acres. He gave background information for the property, noting that in 2016 the petitioners received developmental variances from the BZA to build a pole barn with a residential unit on the second floor, no occupied space on the first floor, and to waive the requirement of connecting to City water. A site plan for the

pole barn and a parking/driving aisle was approved in December, 2017. The barn was constructed without the second floor dwelling unit and the approved driving aisle was not constructed.

A corral was constructed on the west end of the barn, adjacent to Waverly Avenue, where animals with special circumstances are kept and where a three-sided animal shelter was constructed without City approval. The petitioners explained they added the shelter at this location because they felt it was the optimal location because it's screened from the wind. The unapproved shelter was installed in the front yard setback, approximately 2' from the property line along Waverly Avenue where 25' is required.

Mr. Deegan stated that approval of this request is not warranted because the property is over ten acres in size, with plenty of room to relocate the shelter. He also pointed out that the Waverly Avenue right-of-way is 20' in width and current minimum right-of-way for local streets is 50'. He noted if Waverly Avenue right-of-way ever requires expansion the existing animal shelter might become an issue. Staff recommends denial of the request and recommends that the animal shelter be removed within 30 days of the Board's decision.

Mr. Deegan noted for the record that two letters of support were received for this petition, along with one telephone call, voicing opposition to the request.

Petitioner Presentation:

Jim Wellington, 116 W Washington Street spoke on behalf of the petitioner. He stated he doesn't feel this is a structure because it has no foundation and only has three sides. Because it was placed inside his fence, he assumed it would be fine. He went on to say they have a very limited space to place this shelter because a large portion of their property is located in the floodway. He pointed out if this was moved 11 feet farther, it would block a gate and just beyond that is a watering area for the animals. He stated if there was any sort of development along the street, this structure could be moved later.

Mr. Holtzinger asked how it would be moved.

Mr. Wellington stated the fence would have to be removed and the structure disassembled.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Holtzinger stated this is a narrow avenue, with low volume of vehicles and feels it would be appropriate to grant temporary approval provided no permanent foundation is added.

Mr. Deegan stated that since structure less than 400 sf, it can be located within the regulatory floodway and approved administratively by Staff. He explained it's not accurate to state that the shelter cannot be moved elsewhere on the property because of the floodway.

Mr. Wellington stated that allowing this structure to be placed in the floodway would cause it to be destroyed in a flood.

Mr. Deegan noted the 10.65 acre property does not create the need for this structure to be placed in the setback.

Mr. Wellington stated that moving this structure would be very difficult. He went on to say that even though they have over ten acres, they want to keep the shelter out of the water.

Reopen public hearing

Karen Wellington, 116 W Washington, also spoke to the petition. She stated the reason this is the best location is because of its proximity to the barn, food, and water. This is an ideal location and they have nowhere else that offers this same convenience.

Reclose public hearing

Mr. Deegan stated that in making a recommendation, consideration is given towards what might happen in the future. He pointed out that any future development in the area could include expansion of the right-of-way and if that happened, the City would also have to compensate for the structure. He also noted extending utilities would become more difficult and future development would require expansion of the right-of-way for utilities.

Mr. Kauffman asked if a condition could be included that any City expansion requiring the removal of the shed must be paid for by the petitioner.

Mr. Holtzinger added that it not be placed on a permanent foundation.

Attorney Kolbus stated he favors Mr. Holtzinger's recommendation requiring the shelter not be placed on a permanent foundation. It could then be moved and no compensation would be required.

Mr. Deegan pointed out that they might run into building code issues, noting that temporary structures are allowed for a maximum of 90 days. If this is approved here, approval will also be required from the building department.

Mr. Holtzinger pointed out this road has little traffic and feels chances of it being "super developed" are likely limited. He went on to say a structure with no foundation could be easily moved or if the right-of-way needs to be expanded, it could be done at a low cost to everyone.

Mr. McKee stated if the structure is damaged by a storm or similar, the requirement should be that it be relocated.

Mr. Holtzinger agreed with Mr. McKee's statement.

Attorney Kolbus stated that can be added as a commitment.

Mr. Kauffman stated he's in favor of granting the request, with the commitment that if it ever needs to be moved for a project, it should be at the property owner's expense.

Action:

A motion was made and seconded, Kauffman/Holtzinger to accept the findings of the Board and approve 20-02DV 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. An approved zoning clearance form is required.
6. Approval by the Engineering, Building, and Fire Departments 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. If at any future date the structure interferes with a City project or acquisition of right-of-way, the owners shall remove the structure at their own expense.

The motion passed unanimously by a vote of 4-0.

20-01UV – Christopher & Gretchen Kingsley and Terry Herschberger request a use variance to allow an approximate 528 sf second story building addition above the existing garage for a second dwelling unit in an R-1 zoning district where two-family dwelling units are permitted in the Residential R-2, R-3, and PUD Districts and conditional uses in the R-1S and B-2 zoning districts. The subject property is generally located at 212 Carter Road and is zoned Residential R-1 District.

Staff Report:

Mr. Deegan explained this property is completely surrounded by single-family residences. The request is for a second story addition of approximately 528 SF, to be used as a dwelling unit for their aging parents and in-laws. Access to the second unit will be from the existing garage and will not be directly connected to the main living space. According to the petitioners, the proposed design will allow for privacy for both families. Parking requirements for both uses would be met.

Since 2014 three similar requests have occurred, each of which were denied. The Board's reasons for denial included protecting R-1 zoning, insufficient parking, and that economic hardship was not adequate reason for approval. He noted the BZA approved a variance in 2019 for a second primary structure at 320 S 5th Street. This variance was granted in part because of the fact that surrounding properties were multi-unit and the existing home on the property already contained a multi-unit tourist home.

Mr. Deegan stated today's request is completely different from the second primary structure approved for 320 S 5th because this property is completely surrounded by R-1 zoning. He also pointed out that a variance is not required to create additional living space because the rear of the house has ample room for an addition and the two living spaces would connect directly causing the variance to become unnecessary. He also pointed out that the proposed use does not support the comprehensive plan which seeks to reduce the number of single-family homes that have been converted to multi-family housing.

Mr. Deegan noted for the record that two adjacent property owners contacted the Planning Office voicing support of this request.

Petitioner Presentation:

Chris Kingsley, 212 Carter Road, spoke on behalf of the petitioner. He stated he obtained a letter of support from adjacent homeowners which outlined their understanding that the petitioner will be constructing an addition and that the use will be restricted to single family. He stated that the entrance to the addition will be through the existing garage, noting that this was the most economical and attractive design that will not take away from what they love about the property. He went on to explain the natural place to add on would be at the rear, but they want to keep the patio adjacent to the rear and adding on to the rear of the home would also cost more, mostly because of foundation work. He noted that from the outside, this home will still appear to be a single family house.

Mr. Kingsley stated that he didn't realize until later in this process, that having a second unit would require a separate address. He asked that this be approved with a condition that the use be consistent with a single family home and that there not be a separate address because the additional address is what triggers the need for separate utility service. He stated he feels the second address would also encourage use of this unit as a rental in the future.

Attorney Kolbus stated these issues would need to be addressed by the Board of Works (BOW) and Engineering Department.

Mr. Kingsley noted that providing privacy for all parties is important and he feels that this addition is a good solution.

Mr. Holtzinger noted that a lot of rental properties only have one water/sewer connection and asked what would keep the next owner from renting out the additional unit without notifying the City. He asked how the neighbors can be protected.

Mr. Kingsley stated he understands the concern and he hopes that formalizing the use of the property would deter future owners from using this as anything more than a single family residence.

Terry Hershberger, 2812 Greenleaf Blvd, Elkhart, also spoke to the petition. He stated that access to the rear of the home is limited and it would be difficult to get equipment back there to dig a new foundation and concrete would likely need to be pumped through the garage.

Mr. Kauffman asked Mr. Deegan if the petitioner could add this addition over the garage for his immediate family without obtaining a variance.

Mr. Deegan stated it doesn't matter who lives in the unit. If there is no connected living space between the two, its considered a second unit. He explained that with this plan, occupants of either unit could come and go without and ever seeing the other occupants.

Mr. Aguirre asked if they tried to find a way to construct the addition without the need for a variance.

Mr. Kingsley stated they looked at the outside of the home trying to find a way to meet the criteria. He indicated that cost is a real concern and feels that this option is a lot less disruptive than building the addition over the existing patio.

Mr. McKee asked if separate utilities is a requirement.

Mr. Kingsley stated it's his understanding that Planning requires the second address. He went on to say that he had spoken with Dustin Sailor who told him as long as there is only one address, he's ok without separate utilities, but if separate addresses are assigned, separate utilities would also be required.

Mr. Deegan pointed out this is an Engineering or Utility ordinance that's being discussed here today. He stated it's his understanding that if the units remain under single ownership and if the second unit is subordinate to the main unit, then the BOW can make the decision to keep it under one address.

Mr. McKee pointed out this will already have separate entrances and if there is an additional address and utilities are separated, that makes it easier to rent out both units at some point.

Mr. Aguirre asked why this garage addition can't be attached to the living space of the home.

Mr. Kingsley responded that it would be easier if there was an existing second floor

Audience Comments:

Ed Groff, 210 Carter Road spoke to the petition. He stated that he is an immediate neighbor and he supports this request.

Jean Stucky, 208 Carter Road, also spoke to the petition. She asked that if approved, the Board word the approval that the home can never be used as a duplex.

Nancy Kauffmann, 111 Carter Road, also spoke to the petition. She asked for clarification on where the door to the addition would be placed. She also asked that the Board restrict any future use to single family use only.

Jeremy Stutsman, 202 S 5th Street, also spoke to the petition. He stated he feels that Staff has made the correct decision for our current standards and regulations in the community. He also noted that over the past few years, the City Council has discussed allowing more accessory dwelling units. He stated that trying to do this City-wide

has been difficult because it makes sense in some areas, but not in others. He stated surrounding municipalities are looking into how to make this work and advised that this will eventually come to Goshen as well. He explained he feels this is something we need to be supportive of for areas where it makes sense and feels that today's request would make a nice addition if passed with the commitments that have been discussed.

Mr. Aguirre questioned how you limit what future owners do with these types of properties.

Mr. Stutsman stated it would make it easier to convert to a duplex or rental in the future if they are required to put in a separate meter.

Brett Weddell, 916 Larimer Drive, also spoke to the petition. He stated he feels accessory dwellings are not appropriate throughout the City, but it makes sense in this case. He pointed out there would be no exterior entrance and the petitioner is willing to make commitments to help ensure this home will not be sold as a multi-unit in the future. He also pointed out this project has neighborhood support.

The public hearing was closed.

Staff Discussion:

Mr. Aguirre asked for clarification on deed restrictions.

Attorney Kolbus explained how deed restrictions work and how they are enforced, noting that deed restrictions do not involve the City. He stated if the Board is inclined to grant the variance, commitments can be included which will help with any concerns the neighbors might have. Suggested commitments include that the property remain under one ownership and that the petition be granted for a time period or as long as one or both of Gretchen Kingsley's parents reside in the unit. He pointed out that when they no longer reside there, the property reverts back to single family. He also pointed out the commitment could allow parents of the owner-occupants to reside in the second unit without naming specific persons which would allow the use to continue when no longer owned by the Kingsley's.

Mr. Aguirre asked that the public hearing be reopened to ask Mr. Kingsley his thoughts on the recommended commitments.

Reopen public hearing

Mr. Kingsley stated he wasn't aware of the option to have the variance cease when parents or parent-in-laws are no longer residing there. He stated he is ok with that restriction provided the unit doesn't have to be deconstructed when no longer in use.

Mr. Deegan pointed out that even when it's no longer classified as a second unit, the addition above the garage would still contain a bedroom, bathroom, and kitchen and the reality is that the City doesn't have the power to police what's going on here in the future. He pointed out if the Board is contemplating approving on Attorney Kolbus' remarks, it would be reasonable to ask that the kitchen be removed from the addition when it's no longer occupied.

Mr. Kauffman stated he wouldn't want that to be a requirement because he would want the ability for the house to be used in the same manner by the next owner. He asked if the BZA can require something in the deed restriction.

Attorney Kolbus responded that the Board cannot require a deed restriction, but the homeowner can voluntarily offer one.

Mr. Kauffman stated as long as this is under the Kingsley's ownership they may not intend to do something different, but it's possible the next owner will. He went on to say he's in favor of approving on the condition that it lasts as long as they own the house.

Attorney Kolbus stated if the use is only permitted as long as they own the house, nothing would have to be removed but the next owner would have to return to the BZA and justify keeping the second unit.

Mr. Holtzinger stated he feels latitude should be given in this case, but feels the neighbors will need to be vigilant if the ownership changes.

Attorney Kolbus stated there was a case where the petitioner volunteered a deed restriction. He asked if Mr. Kingsley would volunteer a deed restriction in this case.

Mr. Kauffman stated he would want to see a deed restriction stating that this property cannot be used for multi-family dwelling, an R-2 use.

Mr. Kingsley volunteered to add a deed restriction limiting the use of this property. He noted he would like the wording to state "that the use is restricted to R-1 use, barring future decision by the BZA".

Reclose public hearing

Action:

A motion was made and seconded, McKee/Holtzinger to accept the findings of the Board, and approve 20-01UV. The Board finds that the variance arises from a condition peculiar to the subject property because of the difficulty accessing the back yard with building supplies and equipment, and that strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the subject property because it is not cost effective. The following conditions and commitments apply:

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. An approved zoning clearance from is required.
4. Approval by the Engineering, Building, and Fire Departments is required.
5. 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.
6. 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.

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 Real Estate shall remain under single ownership.
3. The variance shall be for a time period as long as one or both of the Grantor's parents reside in the second unit.
4. The Grantor shall place a deed restriction on the property stipulating that upon sale of the property, the property shall only be used as a single family dwelling.

The motion passed unanimously by a vote of 4-0.

VIII. Audience Items:
None

IX. Staff Board Items:

- *Residency forms for Allan Kauffman and Richard Aguirre*

Mr. Deegan noted for the record that signed residency forms have been received from Allan Kauffman and Richard Aguirre.

X. Adjournment: 5:35 pm Aguirre/McKee

Respectfully Submitted:

/s/ Lori Lipscomb

Lori Lipscomb, Recording Secretary

Approved By:

/s/ Tom Holtzinger

Tom Holtzinger, Chair

/s/ Richard Aguirre

Richard Aguirre, Secretary