

Agenda
GOSHEN BOARD OF ZONING APPEALS
Tuesday, May 24, 2022, 4:00 p.m.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

- I. Roll Call
- II. Approval of Minutes from 4/26/22
- III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record
- IV. Postponements/Withdrawals – any person having business to come before the Board may request postponement or withdrawal at this time.
- V. **Use & Developmental Variances**– public hearing items
 - 22-04UV & 22-12DV** – Elkhart Township of Elkhart County Indiana and Michael Bontrager request a use variance to allow electrical and plumbing retail sales (no outside storage), all uses permitted in the Commercial B-1 District, and parking and storage of 2 vehicles in excess of one-ton capacity, and a developmental variance to allow a freestanding sign 4’ in height and 12 SF in area where only ground signs are permitted, for a fire extinguisher sales and service business. The subject property is generally located at 116 S Greene Road and is zoned Residential R-1 District.
 - 22-05UV & 22-13DV** – Pine Manor, Inc., (Miller Poultry), Abonmarche Consultants, Inc, and DJ Construction request a use variance to allow the continued expansion of a non-conforming use, expanding a hatchery in a B-1 District (previous variances 07-09UV, 11-11UV, and 18-14UV) with up to 36,230 Sf of additional building space in four phases with additional parking and maneuvering areas and up to 25 employees, to allow future uses including light assembly and warehousing without manufacturing with up to 25 employees, and a developmental variance to allow the continued expansion to occur without landscaping buffer along the north and west property lines where partial landscaping is required adjacent to residential use, and to allow the variance to be valid until April 6, 2027. The subject property is generally located at 2704 S Main Street and is zoned Commercial B-1 District.
 - 22-14DV** – Walmart Stores and TNT Fireworks request a developmental variance to permit outside sales and display of merchandise (fireworks) from June 16, 2022, to July 5, 2022, where outside sales and display of merchandise is not permitted, except by permission of the BZA for a limited time. The subject property is generally located at 2304 Lincolnway East and is zoned Commercial B-4 District.
 - 22-15DV** - Leatherman Supply, Inc. and Abonmarche Consultants, Inc. request a developmental variance to allow a side (south) setback of 7’ where 10’ is required for a new loading dock and 354 Sf building addition. The subject property is generally located at 2423 Peddlers Village Road & 3016 W Wilden Avenue and is zoned Commercial B-3 District.
 - 22-16DV** - Brian and Rebekah Whirledge request a developmental variance to allow a rear (west) setback of 2’ where 5’ is required for a 700 SF accessory building. The subject property is generally located at 913 S 7th Street and zoned Residential R-1 District.
- VI. Audience Items
- VII. Staff/Board Items
 - 6-month extension – 22-01UV – 801 W Wilkinson from 7/25/22 to 1/25/23
- VIII. Adjournment

Minutes - Goshen Board of Zoning Appeals
Tuesday, April 26, 2022, 4:00 p.m.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

I. The meeting was called to order with the following members present: Lee Rohn, Tom Holtzinger, Bethany Campbell, Hesston Lauver, and Michael Potuck. Also present were Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus.

II. Approval of Minutes from 3/22/22: Lauver/Potuck 5-0

III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Holtzinger/Potuck 5-0

IV. Postponements/Withdrawals - None

V. Developmental Variances – public hearing items

22-08DV – Leon J Bauman & Charlotte K Yutzky request developmental variances to allow a side (north) setback of 3’ and side (south) setback of 1’ where 5’ is required and building coverage of 45 percent where no more than 35 percent is allowed for the construction of a new 528 SF detached garage. The subject property is generally located at 505 S 6th Street and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained this home is located in the Historic Southside Neighborhood where the BZA has routinely granted developmental variances because of the small lots. He explained this lot is narrow at just 28’ in width, and in order to replace a failing detached garage at the rear of the property, encroachments into the north and south side yards are necessary, requiring BZA approval. Additionally, lot coverage will be 45% where a maximum lot coverage of 35% is allowed.

Staff recommends approval, pointing out that this request is nearly identical to a request approved last March for a detached garage at 507 S 5th Street. He noted this garage will meet the characteristics of the neighborhood and the request for a two-car garage is reasonable for a single-family home.

He noted that the Planning Office was not contacted by any neighbors concerning this request.

Petitioner Presentation:

Leon Bauman, 505 S 6th Street, spoke on behalf of the petitioner. He stated the existing garage is lower than the alley pavement which causes water and mud to accumulate when it rains. He noted it has been failing for quite some time and on the advice of a contractor, they have decided to replace it instead of repairing it. He stated there’s no way to fit the garage on the site without a variance.

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, Potuck/Rohn, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 22-08DV with the 4 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

22-09DV – Stalter Holdings, LLC and Professional Permits request a developmental variance to replace a portion of a non-conforming freestanding sign with a 32 Sf electronic message center where electronic message centers are not permitted to be added to any nonconforming sign. The subject property is generally located at 2115 Lincolnway East and is zoned Industrial M-1 District.

Staff Report

Mr. Deegan explained this property is located along the Lincolnway East commercial corridor, on the south side of the City. This property is zoned Industrial M-1 and is surrounded by commercial and industrial uses. Past uses for this building include auto detail, auto sales, and shed sales. The petitioner plans to use it for auto repair and would like to use the existing freestanding sign, which currently stands at 20' in height, where a maximum height of 15' is permitted, and totals approximately 108 SF in area where 50 SF is allowed. The existing sign contains a top section and a changeable copy section. The petitioners would like to reface the top portion of the sign which is permitted by the zoning ordinance and replace the changeable copy portion of the sign with an electronic message center (EMC). Based on current standards, this sign is non-conforming and according to the ordinance, EMC's cannot be added to nonconforming signs.

Staff is largely supportive of the request because the sign area is not being expanded and it is also in character with the area. An amended approval is recommended that would limit the EMC size to 24 SF rather than the proposed 32 SF and would allow the Board to bring the sign closer to conformity.

He pointed out there is one correction for the staff report, noting that the petitioner's willingness to reduce the size of the signs was for the signs on the building, but not the freestanding sign.

Petitioner Presentation:

Garry Potts, 58171 Dragonfly Ct, Osceola spoke on behalf of the petitioner. He stated Mr. Deegan's comments were correct and their proposal is to reface the top portion of the sign and replace the existing removable copy section of the sign with an EMC sign. He explained his client offered a reduction in the number of signs on the building and that was interpreted by Staff as a reduction in the size of the EMC portion of the sign. He explained they feel the sign needs to remain at 32 SF because it sets back 25' from the property line. He went on to say they understand that Staff would like to see the sign be brought closer into compliance, but ask that the sign be approved at 32 SF. He noted his client will abide by the BZA's decision.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Holtzinger stated he feels Staff's recommendation should be followed because the sign regulations were changed a long time ago, with the idea of making large existing signs smaller and allowing owners to include an EMC. He explained that even though this sign is still taller than what the ordinance allows, he feels a 24SF EMC would bring it closer into compliance and that's something he would support.

Mr. Lauer stated he agrees with Mr. Holtzinger, noting that cleaning up the signs was a big issue in the past and he feels we have done a great job along that corridor. He also stated he feels we should keep going forward and not backward.

Action:

A motion was made and seconded, Lauer/Campbell, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 22-09DV with the 5 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

22-10DV – Nathan Mateer Rempel and Sonya Mateer Rempel request a developmental variance to allow a fence 6’ in height in the front yard setback along 5th Street where fences cannot exceed 4’ in height. The subject property is generally located at 113 E Madison Street and is zoned Residential R-3 District.

Staff Report

Mr. Deegan explained that historically, this property was used as a single-family home, and more recently it has had a variety of commercial uses, mixed with residential uses. Today the property is a single-family home with one professional office.

The request today is to enclose the northeast corner of the property with a 6’ privacy fence. This corner property has a 35’ front yard setback along both Madison Street and South 5th Street which limits the maximum height to 4’, thereby requiring a variance from the BZA.

Mr. Deegan pointed out the proposed fence will match the building line along South 5th Street and will be placed outside the vision clearance area. For these reasons Staff recommends approval. He also noted for the record that the Planning Office was not contacted by the public regarding this request.

Petitioner Presentation:

Nate Mateer Rempel, 113 E Madison Street, spoke on behalf of the petitioner. He explained they have a sauna in this area and would like to enclose this section of the yard to give them some privacy.

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, Rohn/Lauver, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 22-10DV with the 4 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

22-11DV – Greenwood Rental Properties, LLC and Jones Petrie Rafinski request a developmental variance to allow a front building setback of 24’ along Plymouth Avenue where 35’ is required for the construction of an 8,908 SF multi-family residential building. The subject property is generally located at 1006 S Indiana Avenue and is zoned Residential R-3 District.

Staff Report

Mr. Deegan explained this property is located at the corner of Plymouth Avenue and Indiana Avenue and an apartment complex planned for the property is currently under review. As part of the project, a new sidewalk will be installed along Plymouth Avenue where there is no existing sidewalk. The original plan was for the sidewalk to be installed on the property, with an easement that would allow public access. After working with both the State and the City, the developers have agreed to dedicate the sidewalk area as a public right-of-way. He explained that by doing this, the size of the property has gotten smaller, and the front yard setback from Plymouth Avenue to the southernmost apartment building is now 24’ where 35’ is required.

Staff recommends approval, noting that the sidewalk and building will be in the same location, but the property line will be shifted northward expanding the public right-of-way.

He advised that the Planning Office was not contacted by the public regarding this request.

Petitioner Presentation:

Austin Blomeke, Jones Petrie Rafinski, 325 S Lafayette Blvd, South Bend, spoke on behalf of the petitioner. He stated this project has been in the works for the past couple of years and with this revised submittal it was agreed upon that the best solution was to dedicate the right-of-way to the City, which caused the encroachment into the front yard setback. He pointed out that without that dedication, they would have been in compliance.

Mr. Lauver asked if the curb line has changed from the original site plan.

Mr. Blomeke stated it has not changed.

Mr. Lauver asked if the State has to approve this change.

Mr. Blomeke stated they have been in contact with INDOT and they have granted their approval.

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, Rohn/Potuck, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 22-11DV with the 4 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

VI. Audience Items
None

VII. Staff Board Items
None

VIII. Adjournment: 4:23 pm Potuck/Rohn

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Tom Holtzinger, Chair

Lee Rohn, Secretary

LOCATION: 116 S Greene Road
CASE NUMBER: 22-04UV & 22-12DV

DATE: May 24, 2022
PREPARED BY: Rossa Deegan

GENERAL INFORMATION

APPLICANT: Elkhart Township of Elkhart County, Indiana (owner); Michael Bontrager (agent)

REQUEST: The applicant requests a use variance to allow electrical and plumbing retail sales (no outside storage), all uses permitted in the Commercial B-1 District, and parking and storage of 2 vehicles in excess of one-ton capacity, and a developmental variance to allow a freestanding sign 4' in height and 12 SF in area where only ground signs are permitted, for a fire extinguisher sales and service business

LOT SIZE: ± 27,000 SF; ± 330' of frontage (150' on Greene Rd & 180' on Lincoln Avenue); ± 180' of depth

APPLICABLE ZONING: Residential R-1

NOTICES SENT: 27

SPECIAL INFORMATION

PUBLIC UTILITIES: Connected to City water & sewer

AREA DEVELOPMENT: Residential, commercial, institutional

NEIGHBORHOOD: None – between West Goshen Neighborhood and Greenfield subdivision

THOROUGHFARES: Greene Road & Lincoln Avenue

TOPOGRAPHY: Level

VARIANCE OF USE STANDARDS

- ◇ Goshen Zoning Ordinance, *Appendix E*, Table of Permitted Uses
 - Electrical & Plumbing Sales, retail (no outside storage) is listed as a permitted use in the Commercial B-2, B-3, & B-4 and Industrial M-1 & M-2 Districts
 - Parking & storage of large vehicles is listed as a permitted use in the Industrial M-1 & M-2 Districts

- ◇ Goshen Zoning Ordinance, *Section 5100.3*, Permitted Signs by District
 - A. Signs permitted in the A-1 Agricultural District and R-1, R-1S, R-2, R-3, and R-4 Residential Districts are as follows:
 1. The maximum area for all signs on the zoning lot, regardless of sign type, shall be no greater than eight (8) square feet.
 2. Only ground signs are permitted.

ADJACENT PROPERTY OWNERS' SUPPORT, OPPOSITION, AND INQUIRIES

The Planning office has not been contacted by any adjacent property owners regarding this variance. However, the Planning office may still be contacted with questions and statements of support or opposition to the variance between the time of this report's delivery and the public hearing.

ANALYSIS

The subject property is located on the southeast corner of the intersection of Greene Road and Lincoln Avenue and is zoned Residential R-1. Surrounding properties include a mix of zoning and uses: single family residential neighborhoods are located to the north and east, a commercial veterinarian supply is located to the south, institutional uses including a large community park, church, and elementary school are located in the vicinity to

the south and southeast, and commercial businesses in the B-1 District are directly to the east. The property includes two driving aisles and a 1,480 SF building which appears to have been built in 1992. The property is the site of a former Elkhart Township fire station which has been abandoned in recent years.

The petitioners are proposing to use the property for a fire extinguisher sales and service business. There are no planned changes to the building, and variances will be required for the following:

- The business, which is comparable to electrical and plumbing retail sales with no outside storage, is permitted in most commercial and industrial zoning districts, but not the R-1 District, so a use variance is required
- The petitioner is requesting that all uses allowed in the Commercial B-1 District, which is characterized as neighborhood commercial, be permitted on this property.
- As part of the business, the petitioner would like to use the two existing parking bays for parking/storage of a box truck and trailer. Parking and storage of large vehicles is not permitted in the R-1 District, so a use variance is required.
- The only signs permitted in the R-1 District are ground signs, which cannot exceed 3' in height and an aggregate of no more than 8 SF for all signs. The petitioner is proposing a sign 4' in height and 8 SF in area, so a use variance will be required.

The request to allow fire extinguisher sales and service and all B-1 uses is warranted based on the following:

- The building is no longer in use, and it is unlikely that it will be easily converted to a residential structure. Approval of low intensity commercial uses will prevent the property from falling into disrepair.
- The property is surrounded by a unique mix of uses and zoning that match the proposed low-intensity commercial uses. The properties directly to the east are zoned B-1, and the property directly to the south is a commercial use approved by variance that includes sales and large vehicle drop-off and storage.
- The subject property has been operated as a fire station for over 25 years; Planning records do not indicate the fire station use clashed with adjacent uses. The proposed use and B-1 uses are comparable in intensity, if not less intense, than a fire station use.
- The layout of the property indicates that business use is unlikely to become a nuisance to adjacent residential properties. The footprint of the building will remain the same. At less than 1,500 SF, the footprint of the building is small in relation to the size of the property (approximately 27,000 SF). GIS measurements show that the building is located approximately 100' from the closest residential property to the west and approximately 147' from the closest residential property to the north.
- To ensure the use of the property remains low intensity in use, staff recommends limiting hours of customer service to 7:30am to 5:00pm Mondays through Saturdays and restricting business use to the inside of the building with no outside display or merchandise and no outside storage.
- Staff also recommends requiring a minimum of 5 large street trees on the property. This will bring the property into conformance with the current street tree requirements, help bring the property into character with other residential properties, and serve as a low-intensity buffer in the front yard.

The requests to allow parking and storage of large vehicles is reasonable given the property has been previously used for fire engine parking. The petitioner has stated that his current box truck is 22' long, so the approval should include a commitment limiting the length of the large capacity vehicles on the property to no more than 22' long, and also requiring that they be stored inside the building.

The dimensions of the proposed freestanding sign are also reasonable. Adjacent properties in the B-1 District are permitted signs up to 8' in height and 32 SF in area. The variance should stipulate that the sign is non-illuminated in accordance with the same requirement in the B-1 District.

FINDINGS OF FACT

Staff recommends **approval with conditions and commitments** of the request to allow electrical and plumbing retail sales (no outside storage), all uses permitted in the Commercial B-1 District, and parking and storage of 2 vehicles in excess of one-ton capacity, and a developmental variance to allow a freestanding sign 4' in height and

12 SF in area where only ground signs are permitted, for a fire extinguisher sales and service business, based on the following:

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.** The building is no longer in use, and it is unlikely it will be easily converted to a residential structure. Approval of low intensity commercial uses will prevent the property from falling into disrepair. The building is small in relation to the size of the property, and includes driveways that provide easy and safe access for turnaround and maneuvering. *The standard is approved.*
- 2. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.** While the property is zoned for residential use, it has been used as a fire station and is surrounded to the south and east by commercial and institutional uses. The building is set back an ample distance from adjacent residential properties. Approval with the commitment to install street trees around the perimeter of the property will buffer it from and blend it with adjacent residential properties. *The standard is confirmed.*
- 3. The need for the variance arises from a condition peculiar to the subject property.** The property has been a fire station and includes a building with bay doors for fire engines. Adjacent commercial uses and zoning, and adjacent institutional uses, give the property a character ideal for a low-intensity commercial use. *The standard is confirmed.*
- 4. Strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the subject property.** Although the property is zoned for residential use, the existing property will be difficult to convert to residential use, whereas the proposed use will require no changes to the existing building footprint and few internal changes. *The standard is confirmed.*
- 5. The approval does not interfere substantially with the Comprehensive Plan.** Goshen's Comprehensive Plan seeks to "promote mixed-use residential and commercial development" (Neighborhoods and Housing N-6.2)

With approval, the following conditions shall apply:

1. The variance shall become null and void unless a zoning clearance 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. Approval by the Building and Fire Departments is required.

If approved, the following Commitments shall apply:

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. Hours of customer service shall be limited to 7:30am to 5:00pm on Mondays through Saturdays.
3. All business shall be conducted in a completely enclosed building. No merchandise may be displayed outside and no storage will be permitted outside.
4. The two (2) vehicles in excess of one-ton hauling capacity parked or stored on the property shall not exceed 22' in length; they shall be stored inside the building during non-business hours.
5. The freestanding sign shall be non-illuminated.
6. Five (5) large street trees of diverse species are required in the front yard setback and shall be maintained in accordance with the current landscaping maintenance standards of the Zoning Ordinance. Existing large species trees in the front yard setback shall count towards the total required.



Looking southwest across Lincoln Avenue



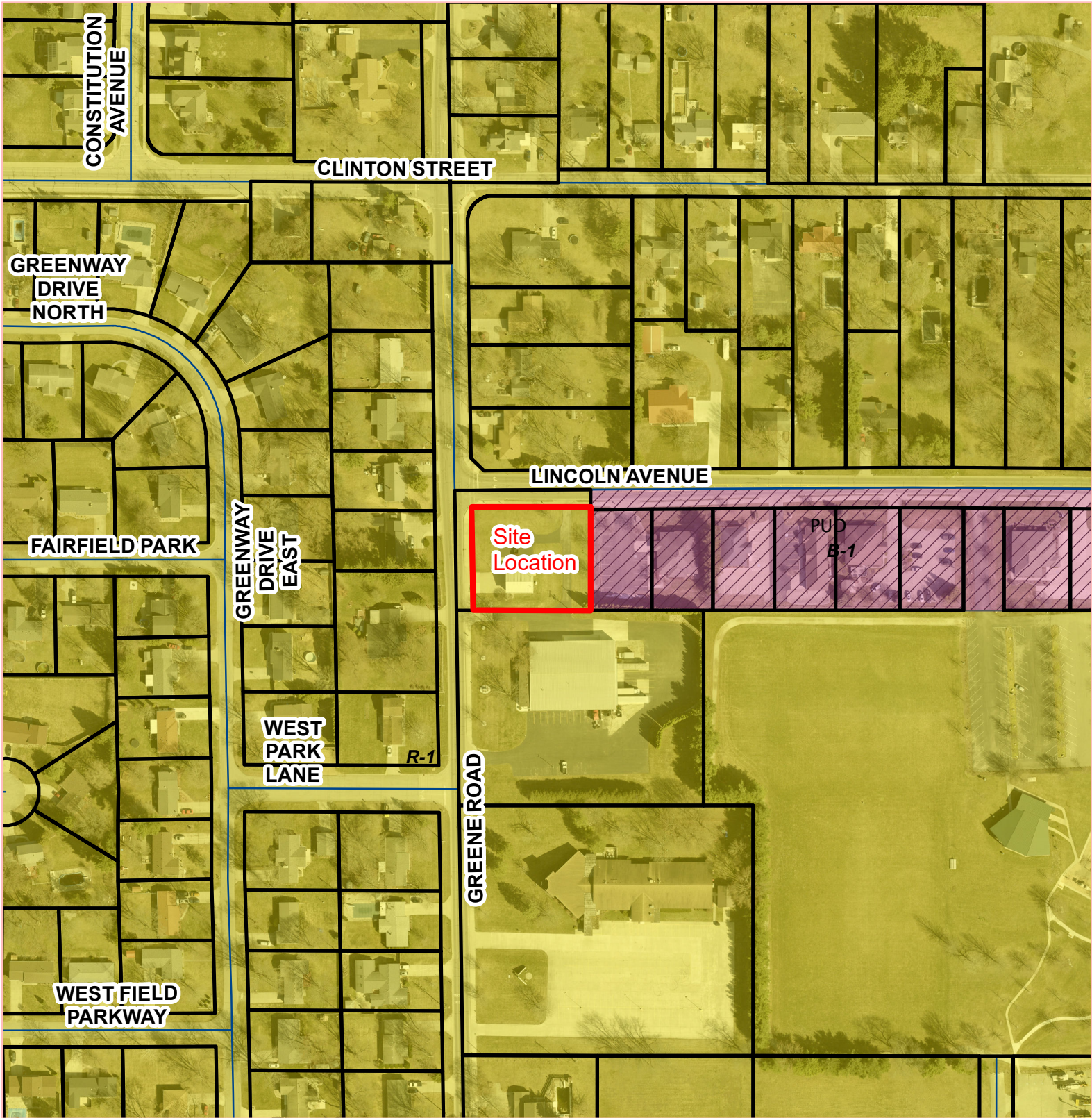
Looking southeast across Greene Road



Looking north across front yard on Greene Road



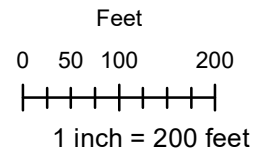
Looking east



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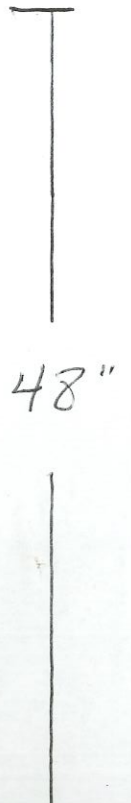
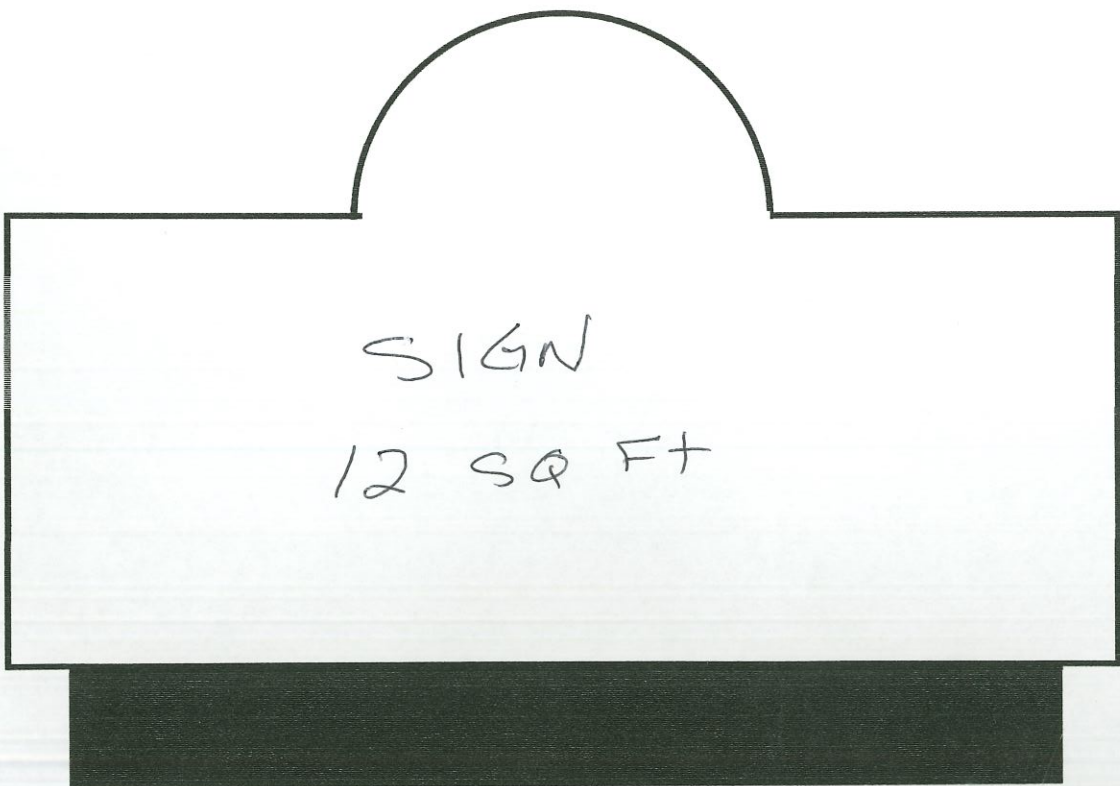
116 S Greene Road

2021 Aerial
 Printed May 10, 2022



The City of Goshen
 Department of

Planning & Zoning
 204 East Jefferson Street, Goshen, Indiana 46528
 Phone: 574-534-3600 Fax: 574-533-8626



48"

LINCOLN AVENUE

GREENE ROAD

10-15
PROPOSED SIGN

116

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116 S Greene Road

2021 Aerial
Printed on 3/25/2022

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Feet

0 5 10 20



1 inch equals 30 feet

The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626

LOCATION: 2704 S Main Street
CASE NUMBER: 22-05UV & 22-13DV

DATE: May 24, 2022
PREPARED BY: Rossa Deegan

GENERAL INFORMATION

APPLICANT: Pine Manor, Inc., (owner); Abonmarche Consultants, Inc, and DJ Construction (agents)

REQUEST: The applicant requests a use variance to allow to allow the continued expansion of a non-conforming use, expanding a hatchery in a B-1 District (previous variances 07-09UV, 11-11UV, and 18-14UV) with up to 36,230 Sf of additional building space in four phases with additional parking and maneuvering areas and up to 25 employees, to allow future uses including light assembly and warehousing without manufacturing with up to 25 employees, and a developmental variance to allow the continued expansion to occur without landscaping buffer along the north and west property lines where partial landscaping is required adjacent to residential use, and to allow the variance to be valid until April 6, 2027

LOT SIZE: ± 7.08 acres; ± 180' of frontage; depth varies

APPLICABLE ZONING: Commercial B-1

NOTICES SENT: 24

SPECIAL INFORMATION

PUBLIC UTILITIES: Connected to City sewer only; City water available

AREA DEVELOPMENT: Residential; institutional

NEIGHBORHOOD: None

THOROUGHFARES: Main Street

TOPOGRAPHY: Level

VARIANCE OF USE STANDARDS

- ◇ Goshen Zoning Ordinance, *Section 6250.3*, Non-Conforming Uses of Buildings, Structures, and Land. If a legal use of a building or structure and land exists at the effective date of this ordinance that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise legal and conforms to the following:
 - B. No such non-conforming building or structure may be enlarged or altered in a way which increases its nonconformity

- ◇ Goshen Zoning Ordinance, *Section 5000.3*, Bufferyard Landscaping
Per Table 2, partial landscaping is required for properties zoned B-1 when adjacent to R-1 land use

ADJACENT PROPERTY OWNERS' SUPPORT, OPPOSITION, AND INQUIRIES

The Planning office has not been contacted by any adjacent property owners regarding this variance. However, the Planning office may still be contacted with questions and statements of support or opposition to the variance between the time of this report's delivery and the public hearing.

ANALYSIS

The subject property has operated as a poultry/hatchery business at 2704 S. Main Street since 1947. The property is zoned Commercial B-1 (neighborhood commercial) and is surrounded by residential uses and zoning to the north and west, a City bike path and railroad to the east, and commercial businesses and Bethany Christian School to the south. Improvements on the property include a primary hatchery facility and a detached structure with a

footprint totaling approximately 52,000 SF; paved parking and maneuvering aisles with access from Main Street; and open loading docks at the south end of the main building. Much of the property is open lawn space along the east and north sides. The owners of the property also own three parcels (2706, 2708, & 2712 S Main Street) to the west of the facility which are not part of the hatchery use; these properties are similarly zoned B-1 and include two residences.

Hatcheries are classified under “Poultry Dressing, Packing and Processing,” and are allowed as conditional uses in the Industrial M-1 & M-2 Districts only. They are not permitted in commercial districts, such as the one covering 2704 S. Main Street, so any expansion of the business at this location is considered expansion of non-conforming use, requiring a use variance.

2007, 2011, & 2018 use variances

In 2007, the BZA approved a use variance to allow the expansion of the hatchery as a non-conforming use. The approved expansion was planned in 2 phases, and involved demolition of approximately 7,500 square feet of building and 12,000 square feet of new construction. The approval’s conditions stipulated that, among other things, employment levels should not exceed 20 individuals at any one time; truck traffic should be limited to 5 trucks per day and 5 large semis per week; and construction exceeding 5 years would need re-approval from the BZA.

In late 2011, approximately one-third of the planned construction was complete, so a variance was sought to continue with the planned construction. The BZA approved the variance and included the same employment and delivery conditions, as well as another 5-year limit on construction before re-approval was needed. None of the planned construction approved in the 2011 variance was completed and the variance expired in 2016.

In 2018, a new request was made to BZA for a use variance to expand the hatchery in 8 phases with up to 33,340 SF of new building footprint, including an expansion onto the adjacent residential properties at 2706 & 2708 S Main Street. Approval was granted to allow the expansion over 5 years, with the first phase beginning after a year, but the variance expired because no permits were issued. In a recent review of the property, it became apparent that a portion of a proposed concrete maneuvering area was installed without zoning clearance review. That area totals approximately 4,700 SF, is located on the north side of the property, and was installed after 2019.

Current request

The petitioners are now requesting a new variance to allow an expansion of the hatchery with the following details:

- 4 phases with a total building footprint expansion of 36,230 SF to be completed by April 6, 2027
- New paving for parking and maneuvering on the east side of the property, as well as retroactive approval for the concrete maneuvering area installed without zoning clearance approval.
- Up to 25 employees
- Future uses may include light assembly and warehousing up to 25 employees
- Relief from landscaping standards that require partial landscaping along the north and west property lines adjacent to residential uses

The Zoning Ordinance requires that properties in the B-1 District connect to City water and sewer, and this property is currently connected to City sewer only. The petitioners have indicated that they will connect to City water in order to add fire suppression to the building.

Staff Recommendation

There are a number of elements of the request that warrant approval. Because the hatchery use has existed on the property for over 70 years without Planning record of incident, is situated on a large property with ample open space, is relatively inconspicuous from Main Street, is directly adjacent to relatively few residential uses, and will

have ample parking for its employees, approval of the proposed expansion over 4 phases is warranted. Because hatcheries are an industrial use, however, approval should include commitments that limit expansion and protect the character of adjacent residential and institutional uses. Staff recommends the following commitments:

- B-1 District standards shall apply except as noted
- No maximum ground floor area limit per building.
- 40' minimum building, parking and driving aisle setbacks adjacent to residential land use/zoning, for all structures, primary and accessory.
- Partial landscaping following the Zoning Ordinance regulations required adjacent to residential land use (already required in B-1 District).
- Total building coverage may not exceed 40% of lot area.
- Outside storage, defined as "the keeping of business or manufacturing products and materials, and other similar materials and equipment in an area outside of a building," shall be prohibited.
- A lighting plan shall be submitted with each site plan submittal, demonstrating that all lighting is retained on site and identifying the location, type and size of all exterior lighting fixtures.
- Connection to City water shall be required with the first phase of the expansion

The request to allow future uses including light assembly and warehousing without manufacturing is too vague to warrant approval. Appendix E of the Zoning Ordinance, which lists permitted uses, does not include "light assembly." Warehousing may be an appropriate use of the property if controlled adequately, but without seeing detailed plans for such a use, it's recommended that the request is denied so that future uses can be reviewed by the Board in more detail.

The request for relief from the landscape standard requiring partial landscaping buffer should also be denied. Partial landscaping is a mix of coniferous and deciduous trees with shrubs or hedges, and is intended to create a partial visual barrier blocking light, sound, and other nuisances. The B-1 District requires partial landscaping adjacent to single family residential use, and industrial uses in the M-1 and M-2 Districts require full bufferyard landscaping which includes an earthen berm. The proposed expansion will partially occur in the northern portion of the property where it has previously been open lawn, so it is important this area has a stronger buffer to protect adjacent residences as the nonconformity expands. The BZA approved a request in October 2021 to allow a fence in lieu of partial landscaping at 924 W Pike Street. On that property, there was only 3' of space available for a buffer, so approval of the fence was appropriate. On the subject property, there is ample space for the landscaping.

FINDINGS OF FACT

Staff recommends **approval with conditions and commitments** of a use variance to allow the continued expansion of a non-conforming use, expanding a hatchery in a B-1 District (previous variances 07-09UV, 11-11UV, and 18-14UV) with up to 36,230 Sf of additional building space in four phases with additional parking and maneuvering areas and up to 25 employees, and to allow the variance to be valid until April 6, 2027, based on the following:

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.** The subject property has operated as a hatchery for over 70 years without any indications of being detrimental to public health, safety, morals, and general welfare of the community. At approximately 7 acres in size, the property is large, includes open space, and is easily accessible from Main Street. The proposed changes to the property include connection to City water in order to add Fire suppression to the building. *The standard is confirmed.*
- 2. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.** The property is relatively inconspicuous from Main Street. At approximately 7 acres in size, the property is large and the existing building and proposed expansions will total less than 30% building coverage. Approval with commitments will ensure adequate setback and building coverage standards will be maintained and landscaping buffer is added as needed. *The standard is confirmed.*
- 3. The need for the variance arises from a condition peculiar to the subject property.** The subject property has operated as a hatchery for over 70 years. At approximately 7 acres in size, it is larger than a typical

Commercial B-1 zoning lot but ideal for the existing non-conforming use and the proposed expansion. *The standard is confirmed.*

4. Strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the subject property. The proposed phased-expansions will allow an increase in the facility's output, coverage of loading docks, connection to City water to add fire suppression, and more employee parking and additional maneuvering areas. Building coverage of the property will still be below 30%. Approval with commitments of the expansion of a non-conforming hatchery will allow expansion within defined limits while protecting the adjacent residential properties and neighborhood. *The standard is confirmed.*

5. The approval does not interfere substantially with the Comprehensive Plan. Approving with commitments the non-conforming hatchery will support the Comprehensive Plan because it encourages diversity in the manufacturing base (E1.5). *The standard is confirmed.*

Staff recommends **denial** of a use variance to allow future uses including light assembly and warehousing without manufacturing with up to 25 employees and of a developmental variance to allow continued expansion to occur without landscaping buffer along the north and west property lines where partial landscaping is required adjacent to residential use, based on the following:

1. The approval will be injurious to the public health, safety, morals, and general welfare of the community. The proposed future uses are described too vaguely to adequately evaluate this criterion. Without seeing details of the light assembly or warehousing, it cannot be reasonably determined if those uses will adversely impact public health, safety, morals, and general welfare of the community. The lack of adequate buffer between expanded areas of the hatchery facility and adjacent residential uses will be injurious to those residential uses. *The standard is not confirmed.*

2. The use and value of the area adjacent to the subject property will be affected in a substantially adverse manner. The proposed future uses are described too vaguely to adequately evaluate this criterion. Without seeing details of the light assembly or warehousing, it cannot be reasonably determined if those uses will adversely affect the use and value of adjacent properties. The lack of adequate buffer between expanded areas of the hatchery facility and adjacent residential uses will adversely affect the use and value of adjacent residential properties. *The standard is not confirmed.*

3. The need for the variance does not arise from a condition peculiar to the subject property. Denial of request to allow future uses such as light assembly and warehousing will not impact the existing hatchery use or proposed hatchery expansion. The property has ample space to install partial landscaping buffer. *The standard is not confirmed.*

4. Strict application of the terms of the Zoning Ordinance will not constitute an unnecessary hardship if applied to the subject property. Denial of request to allow future uses such as light assembly and warehousing will not impact the existing hatchery use or proposed hatchery expansion (if approved). Furthermore, the petitioners have the opportunity in the future to submit a request to the BZA for such future uses with more detailed plans. The property has ample space to install partial landscaping buffer. *The standard is not confirmed.*

5. The approval does interfere substantially with the Comprehensive Plan. Goshen's Comprehensive Plan seeks to "ensure compatibility and smooth transitions between different land uses (e.g. industrial to residential, heavy commercial to residential)" (Land Use L-2.1) Without seeing details of the light assembly or warehousing, it cannot be reasonably determined if the proposed uses are compatible with the adjacent residential uses. Lack of landscaping buffer is contrary to the goal of smooth transitions between uses. *The standard is not confirmed.*

With approval, the following conditions shall apply:

1. The variance shall apply to each phase of the proposed expansion approved by zoning clearance by April 6, 2027. Any phase included in the proposed expansion not approved by zoning clearance by April 6, 2027 shall require review with a new application to the Board of Zoning Appeals.
2. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.
3. Each phase of the proposed expansion shall be reviewed through Technical Review with a separate zoning clearance for each phase.
4. Approval by the Engineering, Building, and Fire Departments is required.

With approval, the following Commitments shall apply:

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 approval is granted to allow a poultry hatchery operation only.
3. B-1 District standards shall apply except as noted.
4. A 40' minimum building, parking and driving aisle setback is required adjacent to residential land use/zoning for all structures, primary and accessory, except adjacent to 2706 & 2708 S Main Street, where a minimum 21' building setback and 0' parking/driving aisle setback shall be acceptable.
5. Partial landscaping following the Zoning Ordinance regulations is required adjacent to residential land use (already required in B-1 District).
6. Total building coverage may not exceed 40% of lot area, with no maximum ground floor area limit per building.
7. Outside storage, defined as "the keeping of business or manufacturing products and materials, and other similar materials and equipment in an area outside of a building," shall be prohibited.
8. A lighting plan shall be submitted with each site plan submittal, demonstrating that all lighting is retained on site and identifying the location, type and size of all exterior lighting fixtures.
9. The property shall connect to City water as part of the first phase of construction following the current BZA approval.
10. Future expansions may occur without further BZA review if all standards are met.
11. Each phase of the proposed construction shall be reviewed through the City's Technical Review process prior to construction.



Looking east across Main Street at entrance to facility



Looking south at north end of the existing facility and proposed location of Phase 2 expansion



Looking northeast at unapproved concrete maneuvering area



Looking southwest at proposed location of Phase 1



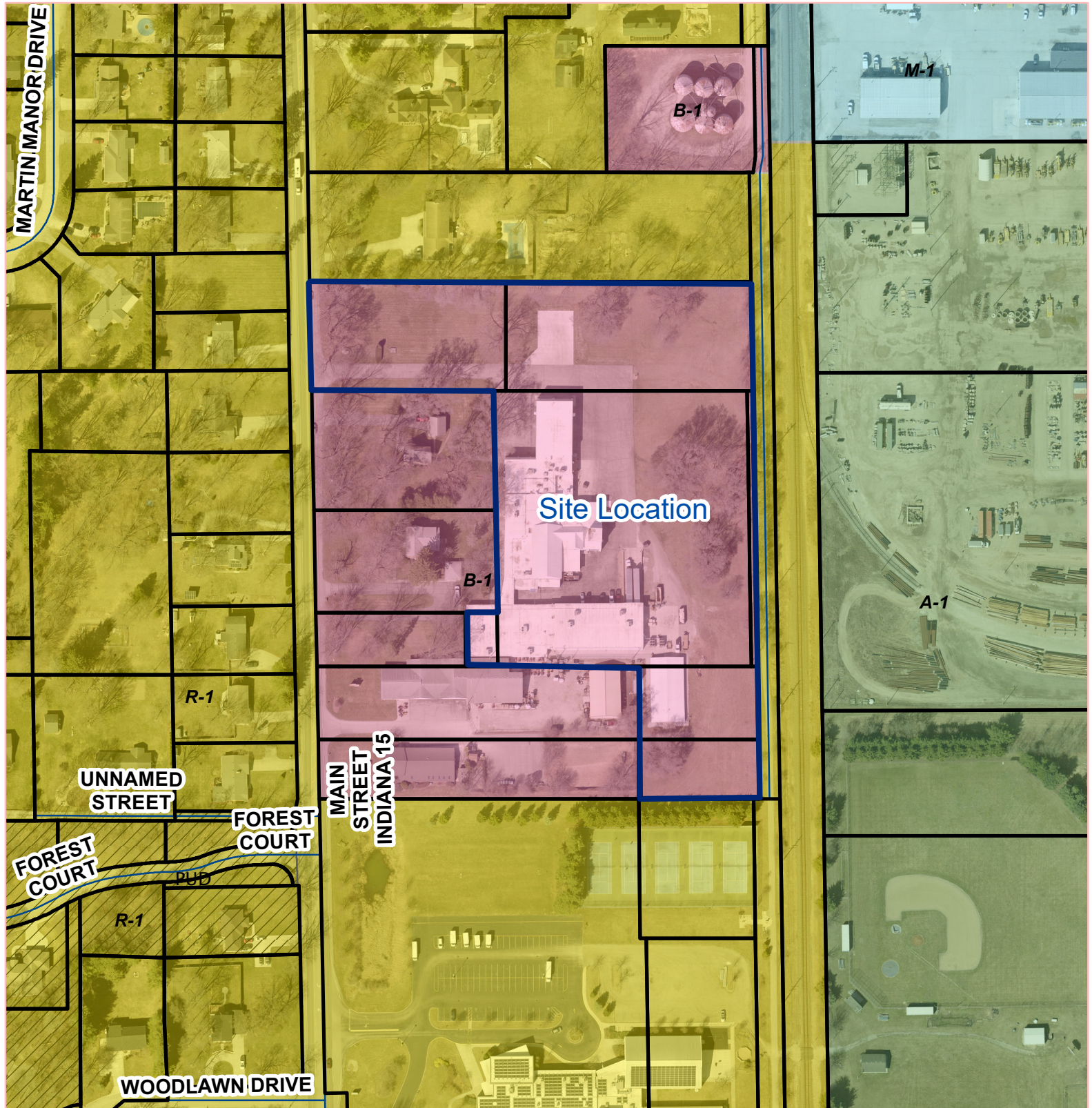
Looking south at proposed location of Phase 3 with detached accessory building in background



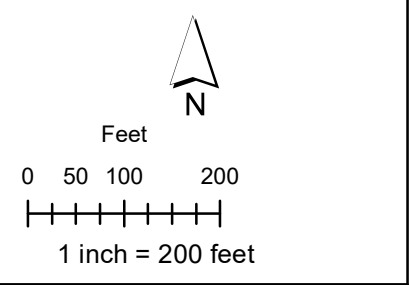
Looking southwest at proposed location of Phase 4



From southeast corner of property on bikepath looking northwest



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**2704 S Main St
Miller Poultry**

2021 Aerial
Printed May 5, 2022

The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626

Pine Manor Inc. and Miller Poultry LLC

(Owner of 2704 South Main Street)

also, PMPA Holdings LLC (owner of 2706 and 2712 South Main Street adjacent to site)

Variances Being Requested:

1. Request a use variance to allow the continued expansion of a non-conforming use, expanding a poultry hatchery in a B-1 District (previous variances 07–09 UV and 11–11 UV and 18-14 UV [approved by the BZA but never effective because the Result/Commitment form was not executed by the owner]) with up to 27,828 square footage of additional building space in three phases, additional truck maneuvering area and adequate parking for necessary employees and vehicles.
2. Approval is requested to allow the variance to be valid for construction through April 6, 2027. The subject property is six tax parcels generally located at 2704 South Main Street and is zoned Commercial B-1 District. The adjacent properties at 2706, 2708 and 2712 South Main Street are owned by same or related and participating entities not opposed to this variance request, but this proposed expansion does not cross onto those properties.
3. Request that no future restriction of non-hatchery operations be placed on this property as was stipulated in the 2018 BZA variance approval. While understanding that a blanket rezoning to M-1 would not be desirable for the neighborhood, and would likely not be approved if we asked for it, we request that future business operations specifically warehousing (without manufacturing) or light assembly (with less than 25 workers per shift) be permitted without further BZA approval. It is our position that either of these two usages would not be more intense than what has existed at this facility for decades. We need assurances that if we invest millions of dollars at this site, we can continue this and perhaps other business activities well into the future.
4. We also request that additional landscaping (beyond the existing trees and grass areas) not be required adjacent to the residential uses at both the north and west property lines.

Background Information on Project

Background information that may be helpful: this property was one of the Martin Dairy farms in the early 1900's and became part of current Pine Manor Inc. and included hatching since 1945. It also included live turkey processing with up to 120 employees through the 1950's, 60's, and early '70's. The farm also included the entire land area where Bethany Schools is currently located and that land was donated to Bethany by the Miller family. Furthermore, the current City Bike Path from Kercher Road all the way to Waterford Elementary School was also owned by the Miller Family/Company and sold at no contest to the City of Goshen even though it was a valuable additional road access to our operations. Finally, we own the 3 properties in front of the land in question. We anticipate owning these to perpetuity partially to protect the business and partially to preserve the quality of the South Main Street area from Kercher Road to "Old County Road 40". We have in fact purchased 3 residences on the west side of SR 15 from the Animal Clinic south to Woodlawn Drive in efforts to update and preserve the neighborhood.

BOARD OF ZONING APPEALS (BZA) PRELIMINARY SITE PLAN

A PART OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 36 NORTH, RANGE 6 EAST,
CITY OF GOSHEN, ELKHART TOWNSHIP, ELKHART COUNTY, INDIANA

ABONMACHE
Benton Harbor
Fl. Wayne
Goshen, IN 46526
P 574-533-9913
abonmarche.com

**MILLER POULTRY
and PINE MANOR**
2704 SOUTH MAIN STREET
GOSHEN, IN 46526

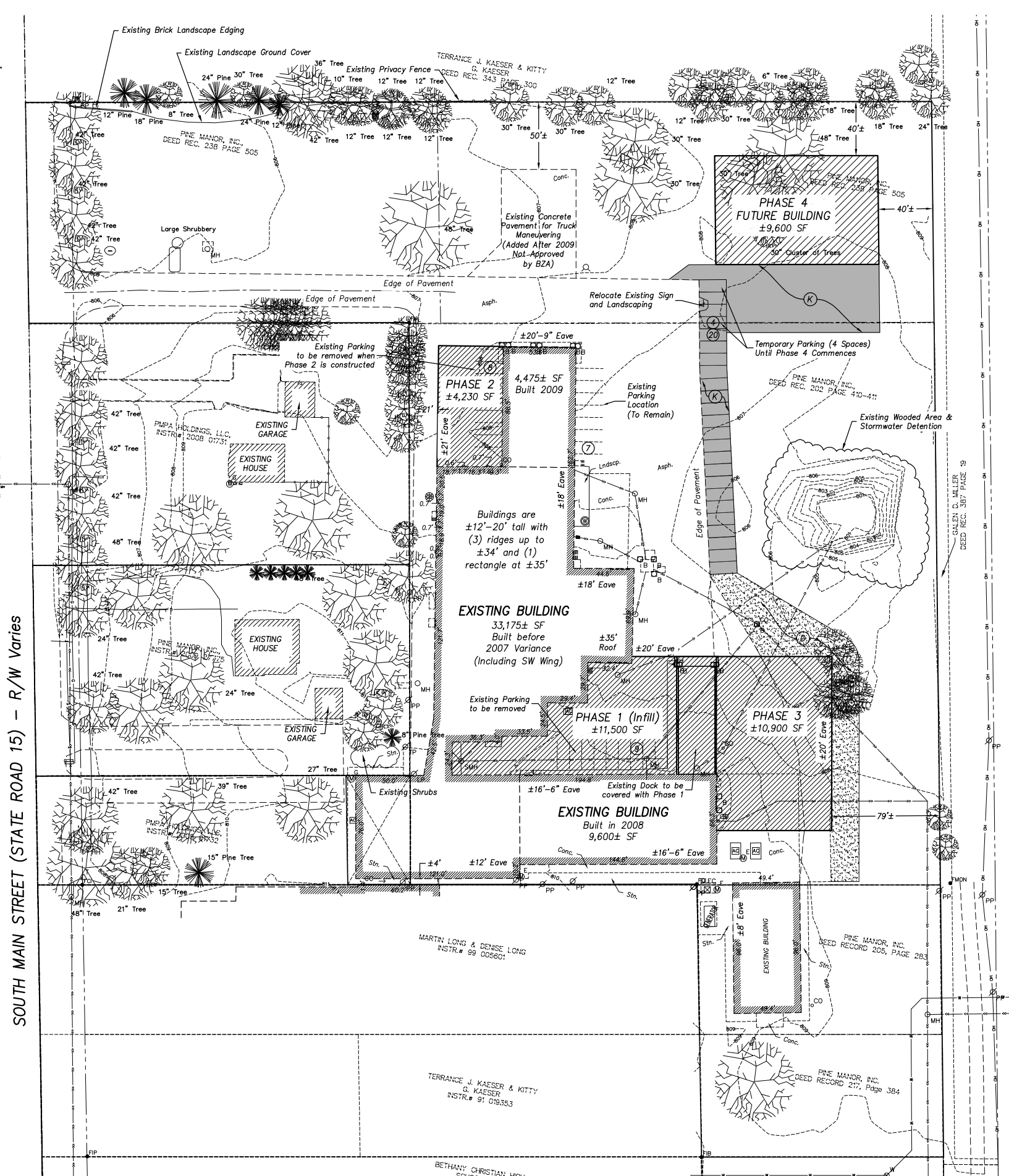
PRELIMINARY SITE PLAN

SHEET TITLE:
DRAWN BY:
DESIGNED BY: **BEM**
PM REVIEW: **BEM**
QA/QC REVIEW:
DATE: **05-02-2022**
SEAL:

SIGNATURE:
DATE:

HARD COPY IS INTENDED TO BE 24" X 36" WHEN PLOTTED. SCALE(S) INDICATED AND GRAPHIC QUALITY MAY NOT BE ACCURATE FOR ANY OTHER SIZES.
SCALE:
HORZ: 1"=40'
VERT:
ACI JOB # **22-0445**
SHEET NO.

C1.0



GENERAL NOTES

1. Current Zoning: "B-1" Commercial (Neighborhood) District
2. Land Use: Existing Poultry Hatchery
3. The project site is currently serviced by City of Goshen municipal sanitary sewer and an existing private water well. The project proposes to connect to City water for fire protection and domestic service.
4. Setbacks shall conform to City of Goshen Zoning Ordinance unless the proper variances have been approved.
5. Site/Building drainage is currently managed onsite via existing retention.
6. Existing and proposed parking areas are privately owned and shall be paved.
7. All radii dimensions are to edge of pavement unless otherwise noted.
8. All landscaping, lighting, and signage shall be in accordance with the City of Goshen Zoning Ordinance unless the proper variances have been obtained.

PROPOSED BUILDING EXPANSION PHASES

Phase	Building Area
Phase 1: Production and Parking Expansion	±11,500 SF
Phase 2: Production Expansion	±4,230 SF
Phase 3: Production Expansion	±10,900 SF
Phase 4: Future Building	±9,600 SF

TABULATED SITE DATA

Site Area = 7.08± Acres

Proposed Land Coverage	Area (Acres)	Percentage
Existing Buildings	1.19	17%
Proposed Building Expansion	0.83	12%
Existing Hard Surface	1.31	19%
Proposed Hard Surface	0.49	7%
Existing Stone Surface	0.16	2%
Proposed Stone Surface	0.15	2%
Open Space	2.95	41%
Total	7.08	100%

PARKING CALCULATIONS

Number of Employees = 18 Currently with Anticipated Growth to 25

Parking Required: 1 Space per 2 Employees
1 Space x (25 Employees / 2) = 13 Spaces

Parking Provided:

- Existing Parking = 24 Spaces
- Existing (To Be Removed) = (17 Spaces)
- Proposed Parking = 20 Spaces**
- Total Parking at Full Build-Out = 27 Spaces

90 Degree Parking = 9' x 20'

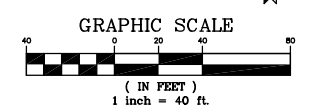
**Temporary (4) Parking Spaces Not Included in Above Calculations

KEYNOTE LEGEND

- Ⓟ Number of Parking Spaces
- Ⓚ Asphalt Pavement
- Ⓧ Stone Surface
- ASPH Existing Asphalt
- CONC Existing Concrete
- LANDSC Existing Landscaping
- STN Existing Stone

OWNER / DEVELOPER
MILLER POULTRY / PINE MANOR
2704 SOUTH MAIN STREET
GOSHEN, IN 46526

ARCHITECT / CIVIL ENGINEER / SURVEYOR
ABONMACHE CONSULTANTS, INC.
303 RIVER RACE DRIVE, UNIT 206
GOSHEN, IN 46526
(574) 533-9913



NO.	REVISION DESCRIPTION	BY	DATE

SOUTH MAIN STREET (STATE ROAD 15) - R/W Varies

LOCATION: 2304 Lincolnway East
CASE NUMBER: 22-14DV

DATE: May 24, 2022
PREPARED BY: Rossa Deegan

GENERAL INFORMATION

APPLICANT: Wal-Mart (owner); TNT Fireworks (petitioner)

REQUEST: The applicant is requesting a developmental variance to permit outside sales and display of merchandise (fireworks) from June 16, 2022 to July 5, 2022 where outside sales and display of merchandise is not permitted, except by permission of the BZA for a limited time.

LOT SIZE: ± 25.13 acres; Lincolnway East, ± 775 feet frontage

APPLICABLE ZONING: Commercial B-4 (Planned Shopping Center)

NOTICES SENT: 19 notices

SPECIAL INFORMATION

PUBLIC UTILITIES: City water and sewer

AREA DEVELOPMENT: Commercial, industrial

NEIGHBORHOOD: Lincolnway East Corridor

THOROUGHFARES: Lincolnway East (U.S. 33) and Caragana Drive

TOPOGRAPHY: Level

VARIANCE OF DEVELOPMENTAL STANDARDS

- ◇ Goshen City Ordinance Section 4220.11.G, **Outside Display/Sales Regulations.** All business shall be conducted in a completely enclosed building. No storage will be permitted outside and no merchandise will be displayed outside except by permission of the BZA. This permission will only be granted for a limited time and shall be in conjunction with displays done with other businesses.

ADJACENT PROPERTY OWNERS' SUPPORT, OPPOSITION, AND INQUIRIES

The Planning office has not been contacted by any adjacent property owners regarding this variance. However, the Planning office may still be contacted with questions and statements of support or opposition to the variance between the time of this report's delivery and the public hearing.

ANALYSIS

On May 27, 2014, Goshen BZA approved a developmental variance to allow the annual outside sale of fireworks (from a tent in the parking lot) at the subject property. Per commitment #5 of the approval, "The use variance for the tent [was] approved for ten (10) years from the date of approval by the City of Goshen Board of Zoning Appeals." Though the BZA granted approval for ten years, the Walmart corporate office did not sign and execute the commitment form, as they do not support a multi-year agreement. Walmart wishes to approve such agreements on a year-to-year basis. BZA approval was granted for this request again in each of the subsequent years between 2015 and 2021.

The subject property is Walmart, located at 2304 Lincolnway East. Developmental patterns of the surrounding area are a mix of commercial and industrial uses.

The petitioner is requesting permission to operate an outside tent in the Walmart parking lot for the display and sale of fireworks from June 16 to July 5, 2022 (approximately two and a half weeks). Hours of operation for the outside tent will be 10:00 am to 10:00 pm daily. The proposed tent, which is approximately 30' x 40', will

displace approximately 12 parking spaces. These details are similar to the ones approved by the BZA in previous years.

All four commercial zoning districts have regulations which address the outside display/sales of merchandise. The B-1 district (neighborhood commercial) prohibits outside display/storage. The B-2 district (city center) prohibits outside storage, but allows outside display/sales of merchandise when part of and related to an active principal use. The B-3 (general commercial) allows outside display/sales of merchandise, when related to an active principal use. The B-4 (planned shopping center) does not permit outside display/sales of merchandise, unless approval is granted by the BZA. According to Section 4220.11.G, approval may only be granted for a limited time.

The Planning office has no record of issues related to this temporary use in previous years, and outside display and sales meets the characteristics of the commercial corridor where they will take place.

The petitioners have stated that they will not be attending the hearing.

FINDINGS OF FACT

Staff recommends **approval** of a developmental variance to permit outside sales and display of merchandise (fireworks) from June 16, 2022 to July 5, 2022 where outside sales and display of merchandise is not permitted except by permission of the BZA for a limited time.

1. **The approval will not be injurious to the public health, safety, morals and general welfare of the community.** Temporary approval will likely not be injurious to the public health, safety, morals or general welfare of the community. While traffic is heavy on the south side of the City near the subject property, there is sufficient space in the parking lot to accommodate the requested 30' x 40' tent. *The standard is confirmed.*
2. **The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.** Temporary approval will likely not affect the surrounding neighborhood in a substantially adverse manner. Section 4220.11.G of the Goshen Zoning Ordinance allows the outside display/sales of merchandise, with BZA approval, for a limited time. The petitioner is requesting permission to allow the tent for approximately two and a half weeks from June 16 to July 5, 2022. Though traffic is heavy on the south side of the City, there is sufficient space in the parking lot to accommodate the requested 30' x 40' tent. *The standard is confirmed.*
3. **Strict application to the terms of the Zoning Ordinance will result in practical difficulties in the use of the subject property.** Per Section 4220.11.G of the Goshen Zoning Ordinance, outside display/sales of merchandise in the B-4 is only permitted with BZA approval. Strict application to the Goshen Zoning Ordinance requires the petitioner to obtain approval from the BZA. *The standard is confirmed.*

With approval, the following conditions shall apply:

1. An approved zoning clearance form is required.
2. Deviation from the requirements and conditions of the variance automatically cancels and terminates the approval or permit.
3. The tent display/sales are limited to fireworks only, from June 16, 2022, through July 5, 2022.
4. The tent size is limited to 1,200 square feet.
5. The hours of operation for the tent will be from 10:00 am to 10:00 pm, daily.



Looking west



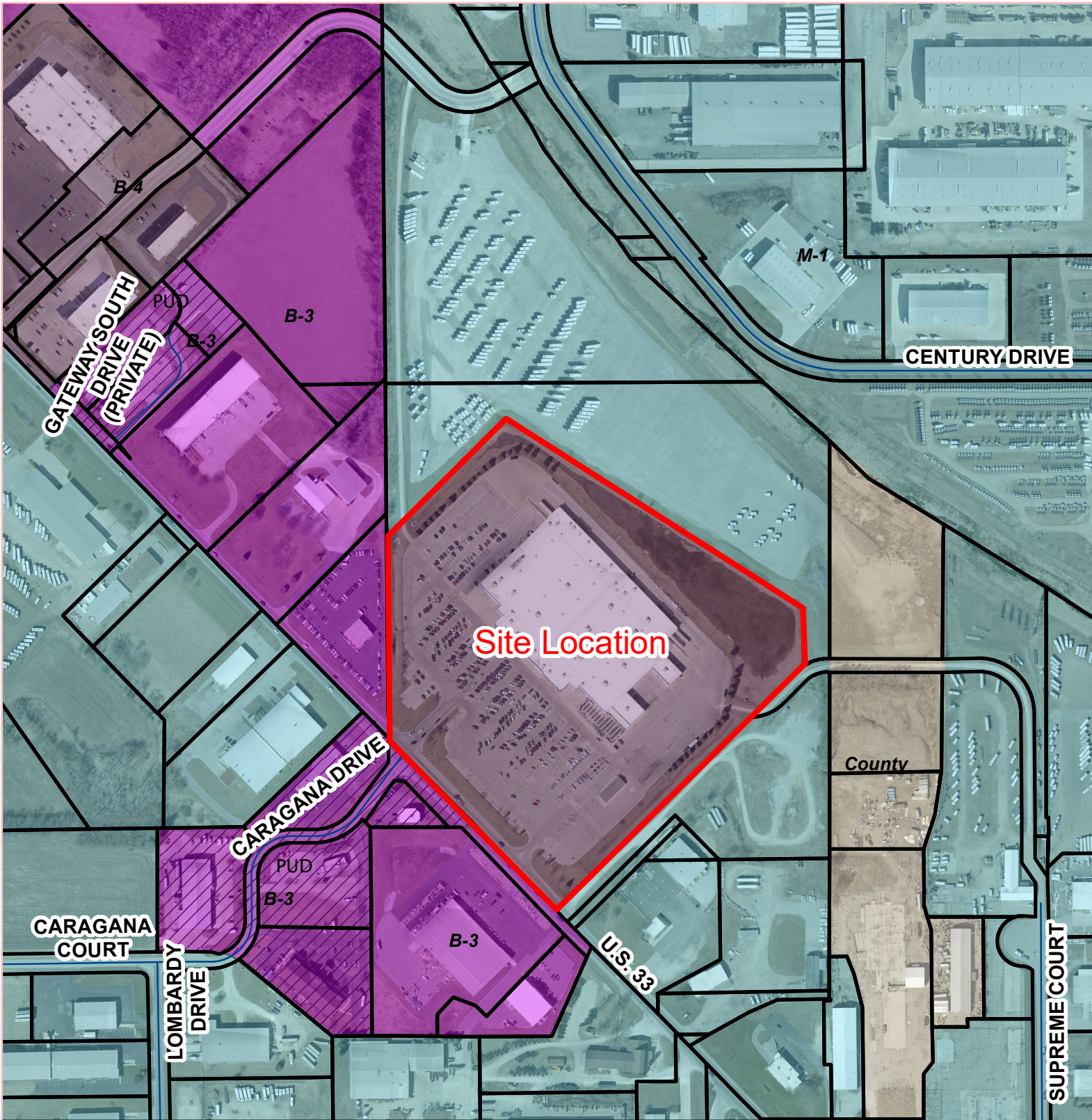
Looking south



Looking east



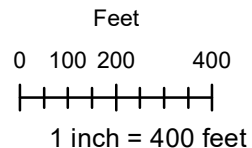
Looking north



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2304 Lincolnway East

2021 Aerial
Printed May 5, 2022



The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626



Dear Zoning Committee,

TNT is requesting a zoning variance for the Walmart Parking Lot on Lincoln Way East in order to operate our annual Fundraising Tent. We are unable to be in attendance this year due to scheduling conflicts as these are our busiest weeks of the year preparing to open our locations, but the request is identical to previous requests. We have operated our tent in this particular location for over a decade with no issues or complaints. We abide by all local laws and draw additional business into the Walmart Parking Lot. The reason we have not applied for a ten-year variance is that Walmart does not allow multi-year variances.

TNT uses locals to operate this site. Because this is their community, they are invested in it. They keep the site neat and organized, and leave it just as they found it (or better) once the sale is over. Because we have been there so long, consumers know to look for us. We appreciate your consideration.

Sincerely,
Rachel Roos
TNT Fireworks Area Manager -Indiana



April 1, 2022

Reference: Temporary Fireworks Sales in Parking Lot (2304 LINCOLNWAY EAST)

To Whom It May Concern:

Here is the information on the temporary fireworks tent sale:

1. Our company will be selling Indiana approved fireworks
2. Our sales period will be no longer than June 16-July 5
3. Hours of operation will be from 10am-10pm daily
4. Sales will be conducted from a tent approximately 30'x40' which will displace approximately 12 parking spaces
5. Fire extinguishers and "No Smoking" signs will be present
6. Overnight security will be provided by the operator (24 hours/day)
7. Our company will ensure the environment is kept clean and safe
8. Our company will provide all necessary information

Sincerely,

Rachel Roos
Area Manager, Indiana



702 SW 8th Street
Bentonville, AR 72716
Jasmine.Allen@walmart.com

September 2, 2021

To Whom It May Concern,

American Promotional Events, Inc. dba TNT Fireworks is an approved National Supplier to conduct fireworks promotions on our Walmart parking lots where this type of promotion is legal. All stores have been researched and approved by the Walmart Realty Department. Approximate time frame for the promotions are:


- December 26th, 2021 through and including January 10th, 2022.
- June 11th, 2022 through and including July 12th, 2022 with the exception of Utah which has an additional selling period through the end of July for Pioneer Days.

American Promotional Events, Inc. dba TNT Fireworks is authorized to sign for and obtain all necessary permits and/or licenses for the promotion and must display such permits and/or licenses at each stand/tent. Walmart grants permission for all patrons of the sale to utilize the restroom facilities at each participating store.

An American Promotional Events, Inc. dba TNT Fireworks representative will call you to introduce the company and discuss your participation in the event. Participation is encouraged and does add additional income to your other income account. Store Management must approve the store's participation and placement on the parking lot.

Thank you in advance for your cooperation in this matter and if you have any questions, please contact TNT Fireworks at 256-767-7142.

Best Regards,

DocuSigned by:

B0E00EFEF25F4DE...
Jasmine Allen
Walmart Retail Services

Goshen Walmart

2304 Lincolnway E

Legend
2304 Lincolnway E

Tent - Row 5



Google Earth

© 2010 Google



200 ft



LOCATION: 2423 Peddlers Village Road & 3016 W Wilden Avenue **DATE:** May 24, 2022
CASE NUMBER: 22-15DV **PREPARED BY:** Rossa Deegan

GENERAL INFORMATION

APPLICANT: Leatherman Supply, Inc. (owner); Abonmarche Consultants, Inc. (agents)

REQUEST: The applicants request a developmental variance to allow a side (south) setback of 7' where 10' is required for a new loading dock and 354 Sf building addition

LOT SIZE: ± 2.2 acres; ± 617' of frontage (± 194' on Peddlers Village Road & 423' on Wilden Avenue); ± 450' of depth

APPLICABLE ZONING: Commercial B-3

NOTICES SENT: 27

SPECIAL INFORMATION

PUBLIC UTILITIES: City water and sewer

AREA DEVELOPMENT: Commercial, residential, & institutional

NEIGHBORHOOD: None; adjacent to Pickwick Manor across Wilden Avenue

THOROUGHFARES: Peddlers Village Road & Wilden Avenue

TOPOGRAPHY: Level

VARIANCE OF DEVELOPMENTAL STANDARDS

- ◇ Goshen Zoning Ordinance, *Section 4210.3*, Area, Width, and Yard Regulations of the B-3 District
C. **Side Yard.** Each lot shall have two side yards measured from the building to the lot line and shall be as follows:
 2. Interior yards shall have two side yards; each side yard shall have a width of not less than ten feet

ADJACENT PROPERTY OWNERS' SUPPORT, OPPOSITION, AND INQUIRIES

The Planning office has not been contacted by any adjacent property owners regarding this variance. However, the Planning office may still be contacted with questions and statements of support or opposition to the variance between the time of this report's delivery and the public hearing.

ANALYSIS

The subject property is a two-acre tract located on the southwest corner of the intersection of Peddlers Village Road and Wilden Avenue. Development directly north across Wilden Avenue is residential while the surrounding properties south of Wilden Avenue are commercial and institutional. A construction supply store is located directly to the south, County archives to the west, and a medical office and bank to the east across Peddlers Village Road.

The property is over two acres in size and consists of two tax parcels. Until recently, the parcels were owned separately, but have recently come under one ownership and are now considered one zoning lot. The combined footprint of the existing buildings on the property is approximately 19,847 SF. The buildings are connected with concrete parking and driving aisles with access from both Peddlers Village Road and Wilden Avenue.

The occupants of the east building propose to expand their window and door sales business to the west building, and as part of the expansion, add a loading dock to the south end of the west building. An approximately 354 SF building addition will accompany the proposed dock. The new dock and addition will have a 7' setback from the side (south) property line where a minimum of 10' is required, so a developmental variance is needed.

Staff recommends approval of the request. Because of the location of the existing buildings, there is nowhere else to place the dock and addition without encroaching in a setback; the side yard along the south property line is likely the best location for such an encroachment. The proposed 7' setback will allow moderate buffer area along the south property line and will match the existing paving in the same side yard. The additions will be on the south side of the property adjacent to another commercial property, far from the adjacent residential properties to the north across Wilden Avenue.

Other developmental requirements for the business expansion across both parcels, such as minimum parking spaces, have not yet been reviewed by City staff, so it's possible that the development will need to return to the BZA for other developmental variances if other requirements cannot be met.

FINDINGS OF FACT

Staff recommends **approval** of a developmental variance to allow a side (south) setback of 7' where 10' is required for a new loading dock and 354 Sf building addition, based on the following:

1. **The approval will not be injurious to the public health, safety, morals and general welfare of the community.** The proposed dock and building addition will maintain a 7' side (south) setback, which is a moderate amount of buffer along the south property line. The health, safety, morals, and general welfare of the community are at no apparent risk from such an addition. *The standard is confirmed.*
2. **The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.** The proposed location of the loading dock and building addition is on the south side of the property, abutting the side of another commercial property. The development will likely be undetectable from Wilden Avenue and adjacent residential properties. *The standard is confirmed.*
3. **Strict application to the terms of the Zoning Ordinance will result in practical difficulties in the use of the subject property.** The configuration of the existing buildings and driving aisles preclude a loading dock and accompanying building addition elsewhere on the property. *The standard is confirmed.*

With approval, the following conditions shall apply:

1. The variance shall become null and void unless a zoning clearance 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. Approval by the Planning, Engineering, and Fire Departments through Technical Review is required.
4. Approval by the Building Department is required
5. An approved zoning clearance form is required.
6. With construction, unimproved areas surrounding the addition that have deteriorated due to vehicle parking shall be stabilized with grass or landscaping.



Looking northwest across Peddlers Village Road



Looking northwest along south property line



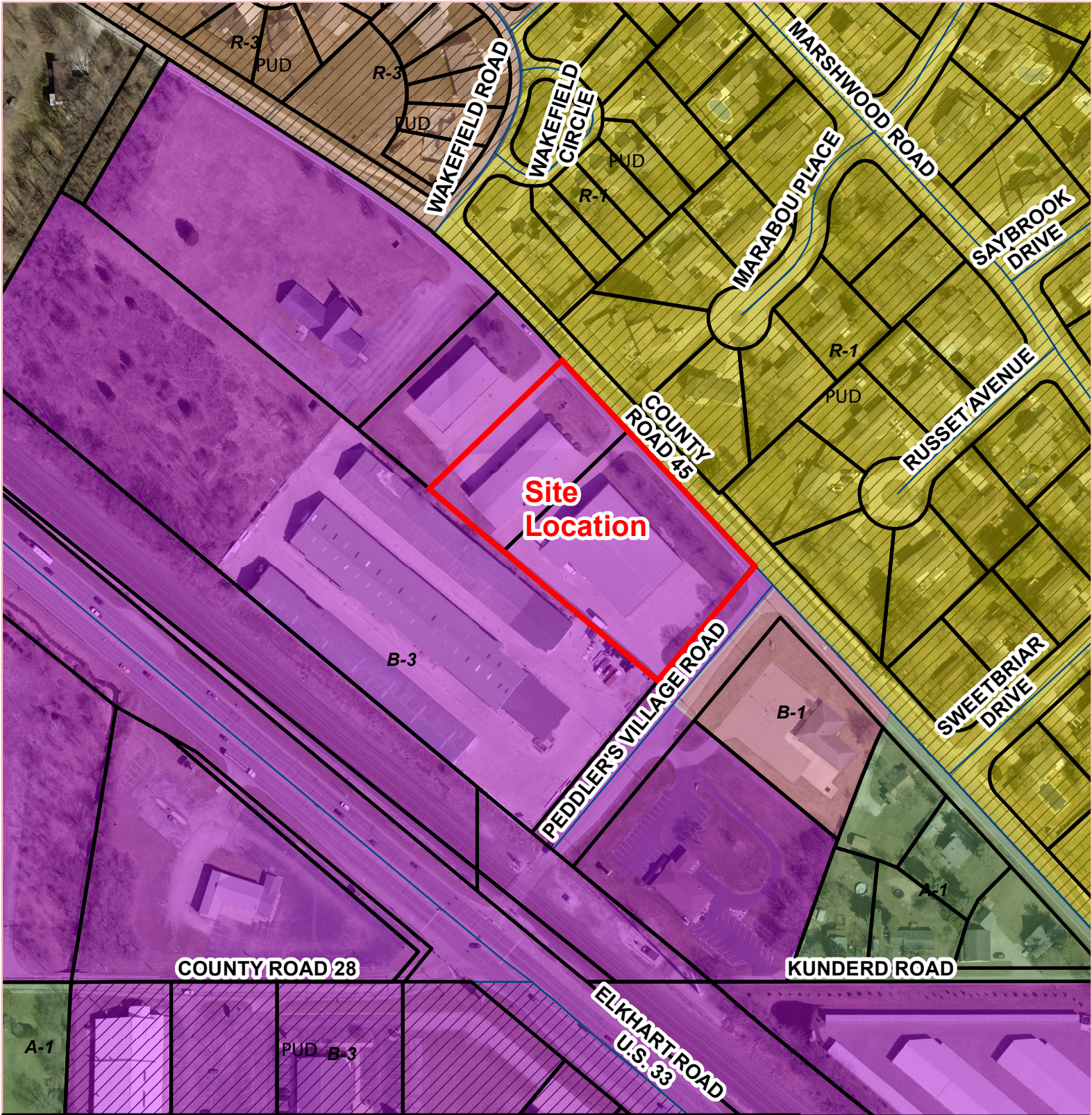
Looking at south end of west building



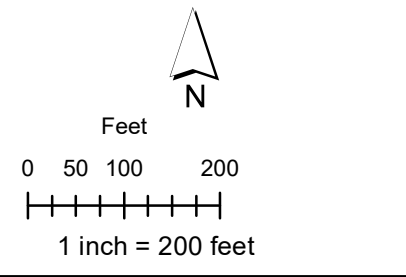
Looking southeast along south property line



Looking southwest between two buildings on property



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2423 Peddlers Village Rd & 3016 W Wilden Ave

2021 Aerial
Printed May 5, 2022

The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626

Developmental Variance Request**SHOWTIMEN99 LLC d/b/a Leatherman Supply**

3016 West Wilden Avenue, Goshen, Indiana

Statement of Request:

A variance from Section 4210.3 of the City of Goshen Zoning Ordinance to reduce the rear-yard setback from the required 25 feet to 7.5 feet to allow for construction of a 354-square-foot building addition and 14-foot by 65-foot truck loading dock.

Suggested Findings:

- a) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community;*

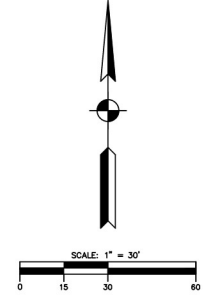
The proposed building addition and truck loading dock are a continuation of the existing use of the subject property and the adjacent property to the southeast. The truck loading dock is to be in the rear yard to allow for all the slowing, turning, and backing movements to occur on the applicant's property, rather than in the adjacent public streets.

- b) *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and*

The adjacent property to the southwest is of similar nature and use as the subject property. The truck loading dock will be located near an exterior wall of the building on the adjacent property; that exterior wall is approximately 400 feet in length and does not have any windows or other openings. The truck loading dock is mostly hidden from view from the adjacent public streets.

- c) *Strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the subject property.*

The location of the existing building on the subject property is near the rear building setback line and there is parking and maneuvering space on either side of the building. The rear yard is the only practical location for the construction of the truck loading dock.



ABONMARCHÉ
 315 W. Jefferson Blvd.
 Lafayette
 South Bend, IN 46601
 T 574.232.8700
 F 574.231.4440
 abonmarche.com

PROJECT:
 LEATHERMAN SUPPLY
 2423 PEDDLERS VILLAGE ROAD
 3016 WEST WILDEN AVENUE
 GOSHEN, INDIANA

SHEET TITLE:
 SITE GEOMETRY PLAN
 PROPOSED TRUCK LOADING DOCK

DRAWN BY: PWW
DESIGNED BY: JDS
PM REVIEW: JDS
QA/QC REVIEW: JDS
DATE: 01/11/2022
SEAL:

SIGNATURE:

DATE:

SCALE:
 HORZ: 1" = 30'
 VERT:

ACT JOB #
 21-1737

SHEET NO.
 1 of 1

LOCATION: 913 S 7th Street
CASE NUMBER: 22-16DV

DATE: May 24, 2022
PREPARED BY: Rossa Deegan

GENERAL INFORMATION

APPLICANT: Brian & Rebekah Whirlledge (owners)

REQUEST: The applicants request a developmental variance to allow a rear (west) setback of 2' where 5' is required for a 700 SF accessory building

LOT SIZE: ± 9,174 SF; ± 56' of frontage; ± 165' of depth

APPLICABLE ZONING: Residential R-1

NOTICES SENT: 39

SPECIAL INFORMATION

PUBLIC UTILITIES: City water and sewer

AREA DEVELOPMENT: Residential, institutional

NEIGHBORHOOD: Parkside

THOROUGHFARES: 7th Street

TOPOGRAPHY: Level

VARIANCE OF DEVELOPMENTAL STANDARDS

- ◇ Goshen Zoning Ordinance, *Section 4140.3*, Area, Width, and Yard Regulations of the R-1 District
D. Rear Yard. There shall be a rear yard on each lot, the depth of which shall be not less than 25 feet.
An accessory building may be erected within the rear quarter of the lot, observing the above side yard requirements and located no closer than five feet from the rear lot line.

ADJACENT PROPERTY OWNERS' SUPPORT, OPPOSITION, AND INQUIRIES

The Planning office has not been contacted by any adjacent property owners regarding this variance. However, the Planning office may still be contacted with questions and statements of support or opposition to the variance between the time of this report's delivery and the public hearing.

ANALYSIS

The subject property is a single family residence located on 7th Street a short distance south of Plymouth Avenue and in the Parkside neighborhood. Surrounding properties are residential and church parking lot is located directly to the west across the adjacent north-south alley. Improvements on the property include a 2-story home with a footprint of approximately 1,470 SF, and an approximately 260 SF shed along the rear alley.

The petitioner is an artist who currently operates a home occupation in a spare bedroom in his room. He is proposing to build an accessory building in the rear of his property to provide him more studio space. Home occupations are permitted in the R-1 District, but the proposed accessory structure will have a 2' rear setback from the west property line where a minimum of 5' is required.

The petitioner states that the reason the building will encroach in the setback is to maintain open yard space in the middle of the property for family leisure. There are no buildings or improvements on the property creating the need for the proposed encroachment. The petitioner has pointed out that at least 6 other properties along the same side of 7th Street on the subject block and the blocks directly to the north and south have accessory structures with similar rear setbacks to the proposed structure; the existing shed on his property also encroaches in the rear setback. Staff analysis using GIS confirms that a detached garage at 913 S 7th Street appears to encroach in the

rear setback. Similar accessory structure encroachments appear to occur at 813, 815, 817, 915, and 1001 S 7th Street.

The size and location of the structure indicate that it will not be injurious to public health, safety, morals and general welfare of the community. The proposed building is a simple structure that will not encroach on other properties or into the City right of way. The BZA has approved rear setback requests before, including March 2021 approval of a garage at 507 S 5th Street with a 4' rear setback along an alley where 5' is required. In that instance, the garage could have been installed at 5' but the petitioner similarly desired to preserve yard space.

Nevertheless, Staff recommends denial of the request. Meeting the minimum 5' setback will not result in practical difficulty in the use of the property. If denied, the property will still have adequate space between the proposed structure and the home for leisure and recreation. GIS measurements show an approximately 40' x 56' area (2,240 SF) of open space between the rear deck of the home and the edge of the structure if it were placed to meet the minimum setback. Other nearby properties, including 705, 805, 819, 915, and 1015 S 7th Street, have detached accessory structures that appear to meet the minimum 5' setback. Consistent with similar decisions, Staff's recommendation that the proposed structure be installed in a location that meets current Zoning Ordinance requirements is consistent with other recommendations when no practical difficulties are apparent.

One other note: the petitioner has explained that fences on the subject and adjacent properties have setbacks less than 5'. The Zoning Ordinance does not require fences to have the same setback as accessory structures; fences may be placed directly adjacent to property lines in most situations.

FINDINGS OF FACT

Staff recommends **denial** of the request for a developmental variance to allow a rear (west) setback of 2' where 5' is required for a 700 SF accessory building, based on the following:

1. **The approval will not be injurious to the public health, safety, morals and general welfare of the community.** The proposed building is a simple structure that will not encroach on other properties or into the City right of way. It will be accessible from within the property and can be accessed in emergencies from the adjacent alley. *The standard is confirmed.*
2. **The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.** A detached garage at 913 S 7th Street appears to encroach in the rear setback. Similar accessory structure encroachments, confirmed by GIS, appear to occur at 813, 815, 817, 915, and 1001 S 7th Street. The BZA has approved rear setback requests before, including March 2021 approval of a garage at 507 S 5th Street with a 4' rear setback along an alley where 5' is required. *The standard is confirmed.*
3. **Strict application to the terms of the Zoning Ordinance will not result in practical difficulties in the use of the subject property.** If denied, the property will still have adequate space between the proposed structure and the home for leisure and recreation. Other nearby properties, including 705, 805, 819, 915, and 1015 S 7th Street, have detached accessory structures that appear to meet the minimum 5' setback. *The standard is not confirmed.*



Looking west across 7th Street at front of home



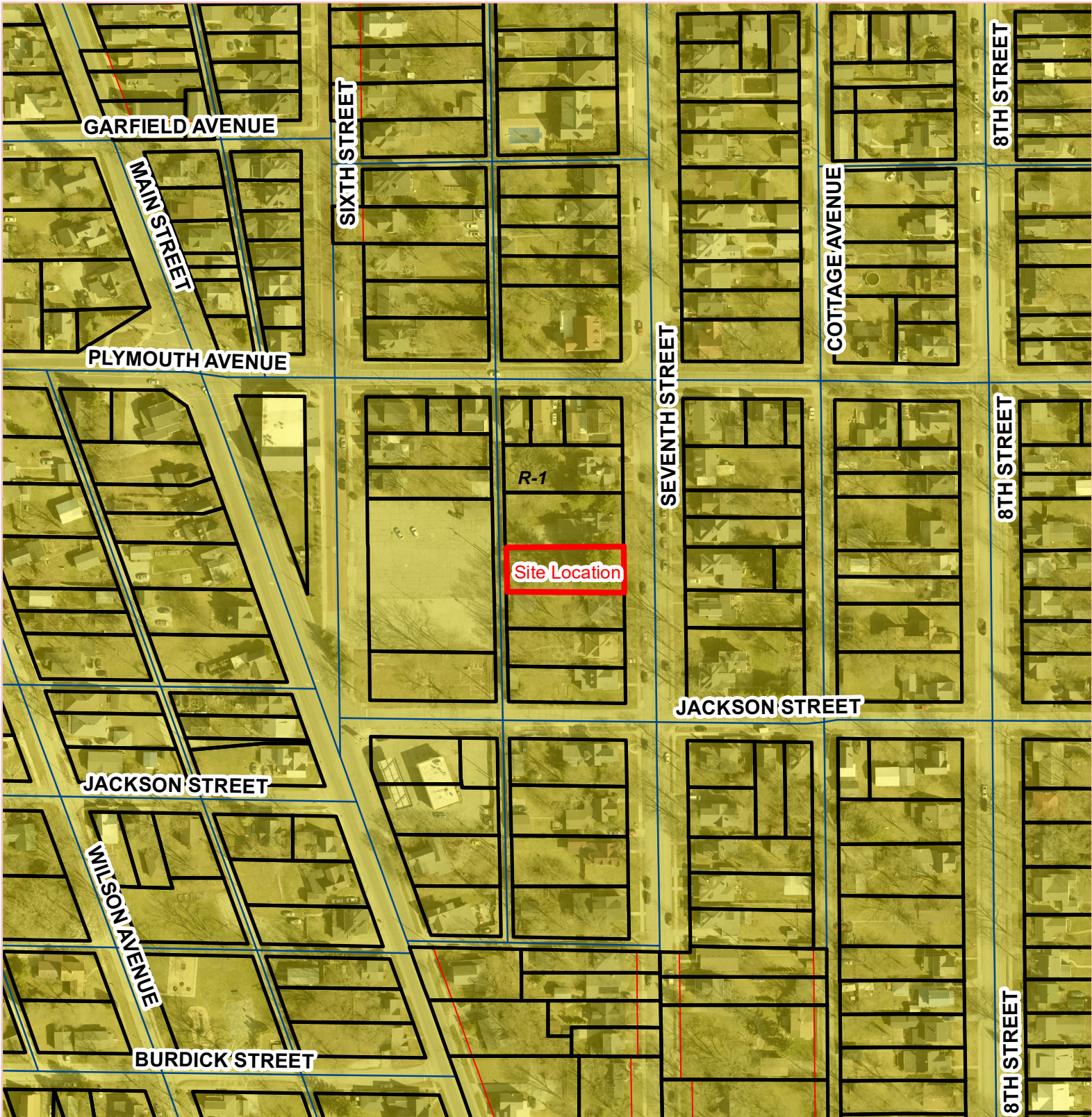
Looking east across alley at rear of property



Looking south along rear property line



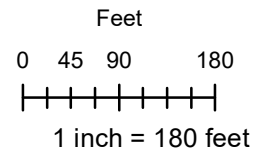
Looking north along rear alley



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913 S 7th Street

2021 Aerial
 Printed May 5, 2022



The City of Goshen
 Department of

Planning & Zoning
 204 East Jefferson Street, Goshen, Indiana 46528
 Phone: 574-534-3600 Fax: 574-533-8626

Brian Whirledge
913 S 7th Street
Coshen, Indiana, 46526
(574) 536-4347
brian.whirledge@gmail.com

May 4, 2022

To: The Clerk of the Goshen City Council, and Board of Zoning Appeals of the City of
Coshen, Indiana
204 E. Jefferson Street, Suite 4
Coshen, IN 46528

To whom it may concern,

I am a Goshen resident and a professional fine art painter. I love our city and community. I have outgrown my studio space in a spare bedroom and would like to build a painting studio on my property. My occupation falls entirely within the definition of a home occupation. As a muralist, I will need a footprint of 23'-4"x26'-4" (or 25'x28' including overhangs). This studio will fit well on my property, however, I would like to maximize our yard space. My wife and I have a three-year-old son and a dog, and we all enjoy using our yard. I dream of painting while watching my son play in the yard.

With careful consideration, I would like to seek a variance to place my proposed accessory building two feet (2') from the back (west) property line. My existing building and fence are closer than two feet (2') to the property line. All fences along this alley and the following nearby properties also have accessory buildings with less than 5' setback from the back (alley) property line: 813, 815, 817, 913, 923, 1001, 1013 (all S 7th St). Strict adherence to the 5' setback of zoning ordinance would place my proposed studio further into my yard, using valuable yard space, while creating an unusable 6-foot space between my shed and the alley. I do not plan on any access to the alley or connecting to water or sewer.

Thank you for your time and consideration.

Sincerely,


Brian Whirledge

Attachments: Site plan, Property Deed, Zoning Clearance, BZA Application



Proposed Accessory Building
Whirledge Residence
 913 South 7th Street
 Goshen, Indiana 46526

Draftsman
Brian Whirledge
 913 South 7th Street
 Goshen, Indiana 46526
 (574) 536-4347
 brian.whirledge@gmail.com

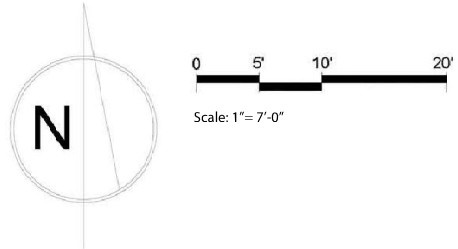
Note
 Variance requested to maximize yard space. Property lines measured from iron survey markers located on property. Accessory building will be a painting studio and will have no access to/from the alley, and will not connect to water or sewer.

Revision	Revision Description
Rev. 2.0	Lorem Ipsum

Record Issue
 Developmental Variance
Drawing Scale
 1" = 7'
Date
 4/26/2022

Sheet Title
Site Plan

Sheet Number
S1



Lipscomb, Lori

From: Tim Wall <twall@nuwayconstruction.com>
Sent: Wednesday, April 27, 2022 4:38 PM
To: Deegan, Rossa
Cc: Mindy Morehead; Lipscomb, Lori; Joe Tinervia; Jan Oostland; Jay Rhodes; Cody Smith
Subject: 801 W Wilkinson - variance extension

Rossa,

Please accept this email as a request for a 6-month extension to the variance approved for group housing quarters at 801 W. Wilkinson.

Thank you,

Tim

Timothy J. Wall, AIA, LEED AP

Architect

Nuway Construction

P: 574-533-0588

C: 574-370-3623



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