

Minutes - Goshen Board of Zoning Appeals
Tuesday, November 22, 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: Tom Holtzinger, Hesston Lauver, Michael Potuck, and Lee Rohn. Also present were Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus. Absent: Bethany Campbell

II. Approval of Minutes from 10/25/22: Potuck/Lauver 4-0

III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Rohn/Potuck 4-0

IV. Postponements/Withdrawals - None

V. **Use & Developmental Variances** – public hearing items

22-13UV - The Board of Commissioners of the County of Elkhart, IN and Elkhart County Community Corrections Advisory Board are requesting a use variance to amend variances 89-19UV & 99-4UV to allow offenders with low-level domestic violence convictions to use the center where the previous variances limit inmates to those incarcerated for non-violent crimes only. The subject property is generally located at 201 N Cottage Avenue and is zoned Industrial M-1 District.

Staff Report

Mr. Deegan explained this property contains approximately 6 acres and is located on N Cottage Avenue. He stated it has been used for a minimum security work release facility since it was approved by a use variance in 1989. The building has been expanded over the years to approximately 41,000 sf. He pointed out that variances approved over the years stipulate it is for non-violent criminal offenders, and today's request is to alter those variances to allow offenders with low level domestic violence convictions to use the facility. A list was submitted by the petitioners with offenses that would continue to be prohibited and according to the petitioners, the types of low-level offenders proposed to use the facility, would not be a danger to the neighborhood, and expanding the facility services to this population will benefit the larger community. Staff feels this request is in line with the City's comprehensive plan, noting it allows for continued employment by the offenders staying at the facility. Staff recommends approval of the request, with conditions and commitments. He noted there is concern that the proposed amendment could adversely impact nearby properties and for this reason Staff recommends a commitment limiting this approval to a five year period at which time it would have to come back before the Board for a new review. Another commitment was added to explicitly outline prohibited offenses.

Mr. Holtzinger asked how the five year review timeframe was determined.

Mr. Deegan stated the facility is already in use as a work release facility and by the applicants explanation, it doesn't appear that there will be any noticeable difference to the property. He felt that five years would give adequate time to see if there is any impact to property values in the neighborhood.

Mr. Deegan noted for the record that the Planning Office was not contacted by the public regarding this request.

Petitioner Presentation:

Nathan Tipton, Director of Court Services for Elkhart County, spoke on behalf of the petitioner. He stated the ordinance is currently written to exclude violent offences, but doesn't define what a violent offence is. He stated the new administration has done a lot of work to make sure this facility is being run correctly and following the rules, but these rules limit the number and types of offenders that can be placed there. He went on to explain the domestic violence offense is generally a crime of passion between two people in a domestic partnership and currently the only two options available are to put them in jail, which offers limited programming and leads to job loss, or they can be out on probation. He pointed out probation will not be as intense as jail or work release. He noted they will have access to more services and likely be able to keep their jobs, but they find that until they go through that treatment they don't want them back in the house with the person they offended. That causes them to look for housing elsewhere or they violate the court order and return to the house with their victim. The work release center allows them to get extended treatment and the ability to keep their job and community connections. It also offers safe housing and supervision.

Kristine Osterday, Chair of the Community Corrections Advisory Board and judge of Superior Court 1, confirmed Mr. Tipton's comments and added that the work release facility is a secure and therapeutic community. She stated it is a program that's used by drug court and the goal is that you have intensive services provided at the facility. She explained when she toured the facility several years ago she noted the number of people there, and the lack of services being provided. When she was appointed as chair of the Community Corrections Advisory Board, they were of the mindset to make the community better for those in the facility as well as the community at large. She noted in addition to therapeutic programming they've added, they've also placed strict limits on the number of people that can be in the facility, which is considerably less than what it was. Because of this not only has the interior of the facility changed, but the exterior has changed as well.

Mr. Holtzinger asked how many additional people they anticipate serving.

Judge Osterday stated in the past year, her court has had approximately 20 good candidates for housing at the work release. She pointed out that housing is a huge issue in our community and a lot of people that come before the court struggle with employment and housing. She went on to explain if they're not allowed to stay at work release, the options are usually jail or prison. They can't be put on probation because they don't have stable housing.

Mr. Holtzinger asked if she anticipates the need for an addition to the facility.

Judge Osterday stated no, that she feels that would underline what they are trying to accomplish as far as the therapeutic services.

Mr. Rohn expressed concern about housing violent offenders in this residential area and their proximity to the railroad and highways.

Judge Osterday agreed these are valid concerns, but pointed out that there are a lot of limitations and restrictions as far as a person's movement within the program and in order to earn certain privileges, they have to show they are capable of following rules. She went on to say it's her experience that anytime someone is not following the rules, it gets addressed rather quickly. She stated that she cannot say no one will run away from the facility or that there will be no crime in the area, but she stated they want to assure the citizens they want to serve those within the facility, and those in the community as well.

Helen Calvin, Executive Director of Elkhart County Community Corrections, 201 Cottage Avenue, also spoke. She stated that the Board's concerns are valid and a new administration was put in place in 2020. When she was hired, it was clear there were issues that needed to be resolved. All staff was trained, multiple programs were implemented, and they make sure everyone that comes into work release is appropriate. If not, the court is notified. They work closely with the jail ministry and St Mark's Church and pointed out

inmates have done neighborhood cleanups, participated in school supply drives, and held neighborhood meetings. The staff's job is to rehabilitate the individual and to make sure they have better skills and better support than what they had when they came through the criminal system.

Mr. Lauver asked about the victims.

Ms. Calvin stated there are protocols in place that if someone goes into a victim exclusion zone, they will know it. Calls will be made to law enforcement and the victim, and the offender is notified that if they are in the zone, they need to get out because law enforcement is on their way there. She stated they can see and track the offender wherever they go.

Mr. Rohn asked what happens if an offender violates the rules.

Ms. Calvin stated if an offender violates a rule such as a restraining order, a protective order, presence in a victim exclusion zone, or cutting their ankle bracelet, the court is contacted and most of the time a warrant is issued and the offender is placed back in jail.

Mr. Holtzinger stated that there is a proposal to review this request in 5 years and asked if it would be satisfactory to review in 3 years.

Judge Osterday stated she has no preference and would leave that to the discretion of the Board, but went on to say she's comfortable reviewing in 3 years and feels that gives them enough time to figure out how well things are working out, and if it works well they might want to talk about expanding the program.

Audience Comments:

Douglas Miller, 114 Crescent Street, spoke to the petition. He stated he has lived in this area for 22 years and a couple years ago he would have been here speaking in opposition to this request, but said everything has changed in the last two years and he is very happy with the new staff. He noted that the petty crime and traffic that was present before is gone and he and his wife have absolute confidence in the work release staff. He asked that they be given the chance to show this will work.

Cory Martin, 707 N 5th Street, also spoke to the petition. He stated he also lives in the neighborhood and echoed the previous speaker's comments, explaining the new administration has done a fantastic job making the work release center a positive place for the men and women that are there. He stated he's in favor of this request.

David Chezem, 121 Crescent Street also spoke to the petition. He asked if this facility will expand if this request is granted and voiced concerns that property values might decrease. He noted that he hasn't had any bad experience with the work release, but questioned if having more violent offenders might change that. He explained he has tenants nearby and wonders if they will feel unsafe.

Mr. Deegan stated a variance was approved in 1999 to expand the facility and that would have allowed the facility to house up to 300 prisoners, up from 150 prisoners and that's the maximum number of prisoners allowed at this time.

Gregory Hartzler-Miller, 520 N 9th Street, also spoke to the petition. He stated he toured the facility recently and was shocked at how many empty beds there were and how clean the facility was. He also noted the staff is ready to take on more work and he wished them luck.

The public hearing was closed.

Staff Discussion:

There was no discussion amongst Board members.

Action:

A motion was made and seconded, Rohn/Holtzinger, to adopt the Staff recommendations as the findings of the Board, but amending commitment #3 to grant approval for a period of three (3) years, instead of five (5) years, and based on these findings, approve 22-13UV with the 4 conditions and 3 commitments listed in the Staff Report. The motion passed unanimously by a vote of 4-0.

VI. Developmental Variances – public hearing items

22-35DV - Len & Marcia Morris and Solar Energy Systems request a developmental variance to allow approximately 6,463 SF of detached accessory structures where the total building footprint area of all detached accessory structures shall not exceed the building footprint area of the primary residential dwelling of approximately 3,045 SF for the installation of two ground-mounted solar arrays. The subject property is generally located at 2614 S Main Street and is zoned Residential R-1 District.

Staff Report

Mr. Deegan provided background information on this property, noting that it contains approximately 5.5 acres, with a single family residence and multiple accessory structures. Because the total of all accessory structures cannot exceed the total footprint of the home, BZA approval is required for the proposed 858 sf ground mounted solar arrays. This brings the total of all accessory structures to approximately 6,460 SF, with the primary home of 3,045 SF. Because of the large size of the property, Staff recommends approval of the request, and noted the proposed arrays will have 15' side and rear setbacks.

Petitioner Presentation:

Rebecca Mitschelen, Solar Energy Systems, 8015 W 1350 N, Nappanee, spoke on behalf of the petitioner. She stated her client is attempting to add as much solar as possible to existing structures. She also noted that a photo in the staff report shows a semi-trailer parked on the property and explained that trailer belongs to Solar Energy.

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/Holtzinger, to adopt the Staff recommendations as the findings of the Board, and based on these findings, approve 22-35DV with the 5 conditions listed in the Staff Report. The motion passed unanimously by a vote of 4-0.

VII. Audience Items

None

VIII. Staff Board Items

- 2023 BZA Calendar

Mr. Deegan explained the BZA calendar is set by the Plan Commission and is being provided so members are aware when 2023 meetings will be held. No action is required from Board members.

- 16-08UV – Commitment Termination Request

Mr. Deegan explained in June of 2016 the BZA permanently approved a use variance to allow grazing and pasturage of animals on a property on Hackett Road which included multiple tax parcels. This use is no longer occurring and portions of the property has been transferred to separate owners. For this reason, the petitioner is voluntarily requesting termination of the existing variance. Staff recommends approval.

Action:

A motion was made and seconded, Potuck/Lauver to accept the termination of 16-08UV. The motion passed unanimously by a vote of 4-0.

IX. Adjournment: 4:43 pm Potuck/Rohn

Respectfully Submitted:

/s/ Lori Lipscomb

Lori Lipscomb, Recording Secretary

Approved By:

/s/ Tom Holtzinger

Tom Holtzinger, Chair

/s/ Lee Rohn

Lee Rohn, Secretary