

Minutes - Goshen Board of Zoning Appeals
Tuesday, April 25, 2023, 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, Bethany Campbell, Tom Holtzinger, Hesston Lauver, and Michael Potuck. Also present were Assistant City Planner Rossa Deegan, City Planner Rhonda Yoder, and Assistant City Attorney James Kolbus.
- II. Approval of Minutes from 3/28/23: Rohn/Lauver 5-0
- III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Potuck/ Rohn 5-0
- IV. Postponements/Withdrawals - None
- V. **Developmental Variances** – public hearing items
23-08DV – Nancy J Miller & Gloria J Banda request a developmental variance to allow open parking in the front yard setback where open parking spaces are not permitted, for an approximately 372 SF driveway expansion. The subject property is generally located at 510 E Plymouth Avenue and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained this single family residence is adjacent to an alleyway, with Water Tower Park located directly east. The petitioner would like to add approximately 372 SF of concrete to the existing driveway to increase onsite parking. He explained this home contains a single-car garage, with no adjacent street parking, and no alternative location available for parking. He pointed out the property to the west has a parking space and building in the front yard and this expanded parking will not disrupt the visual field. He reminded Board members that similar requests have been approved over the years, including an approval in July 2022, at 416 E Douglas, which is one block to the north.

Planning received no public comments regarding this request and recommends approval.

Petitioner Presentation:

Nancy Miller, 510 E Plymouth Avenue spoke on behalf of the petitioner. She stated she is in agreement with the Staff Report and has nothing to add.

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 23-08DV with the 5 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

23-09DV – Elks of Goshen #798 and Signtech Sign Services request a developmental variance to allow an approximately 14.5 Sf electronic message center (EMC) where EMCs are not permitted in the core Historic District, for the installation of a new approximately 69 SF illuminated wall sign. The subject property is generally located at 220 N Main Street and is zoned Commercial B-2HD District.

Staff Report

Mr. Deegan explained the Board considered a similar request for this property in December, 2022. He reminded members this property is zoned Commercial B-2 HD and is located in the downtown historic core. It has operated as the Elks Lodge since at least 1980 and because of its location in the historic core, EMC signs are not permitted. He explained the building currently has two flush mounted signs on the front façade and because of problems changing the lettering on the changeable copy sign, they would like to replace it with an EMC. Their proposal is to reduce the number of signs on the building by eliminating the changeable copy sign and adding the EMC to a new sign in the center of the façade. The EMC will make up approximately 14.5 SF of the new 69 SF sign. He pointed out this application differs from the December 2022 request in that there will only be one sign and the EMC is smaller than what was proposed in the December request.

As with the December request, Staff recommends denial of this request stating that an EMC is not appropriate in this location. The intention of the core standards are to allow signage that is compatible with the historic downtown aesthetic and EMC signs are not compatible. He pointed out there are no similar signs on Main Street although the BZA approved TV monitors in the windows for Goshen Theatre in 2020. He also noted this approval explicitly prohibited the TV monitors from being placed on the exterior wall. No public comments were received regarding this request.

Petitioner Presentation:

Todd Lehman, Signtech Sign Services, 1508 Bashor Road, spoke on behalf of the petitioner. He stated the petitioner is looking for something more user friendly and feels an EMC sign is the way to do that. After consulting with the client following the December meeting, they felt it would be worthwhile to return to the BZA with a request for a single sign with a smaller EMC and they have submitted a proposal that they hope will be more acceptable. He pointed out the message will be static; no scrolling and no flashing lights and can be programmed to turn off during late night hours or when traffic counts drop.

Audience Comments:

Robert Clark, 1819 Bashor Road spoke to the petition. He stated he is the Elks Club secretary and explained to the Board that this is a safety issue. Climbing a ladder to update the changeable copy sign is not appropriate for their older members. He felt that by combining the signs they have been able to compromise. He also noted that he had walked downtown to determine what type of signs are present and noted the nearby gas station has large signs advertising gas prices and a nearby Verizon store has a large EMC that changes graphics and brightness which doesn't fit the neighborhood. He also noted that while the theatre has their TV monitors inside the building, they have flashing LED lights on their marquee. He asked that the Board reconsider and approve this request.

Dave Raber, Elks member, no address given, spoke to the petition. He stated he attends all the business meetings at the lodge and this issue is discussed at each meeting. He explained that being on a ladder in inclement weather is a safety concern for the lodge. The existing sign is quite high on the building and they have trouble finding anyone that will climb the ladder to change this sign. He went on to say there is no desire to have a bright, flashing, gaudy message. He asked that the board consider this request .

The public hearing was closed.

Staff Discussion:

Mr. Rohn stated he feels this submittal is cleaner than the previous.

Ms. Campbell agreed and pointed out the gas station is in close proximity.

Mr. Rohn commented there are businesses on both the north and south side that have different signage.

Mr. Deegan stated he's not familiar with Verizon's message center or if it was placed with or without approval.

Mr. Potuck asked what information Mr. Deegan has regarding the gas station and their signs.

Mr. Deegan stated he has no information.

Mr. Lauver pointed out they're both on the outskirts and questioned at what point does the Board draw a line and stop them from expanding further into the historic district.

Mr. Holtzinger agreed that they have made progress, but when approving new signs, we want to move them closer to being in compliance with the ordinance.

Ms. Campbell commented that the new sign looks much better than the existing.

Action:

Mr. Holtzinger made a motion to adopt the Staff recommendations as the findings of the Board and deny 23-09DV. The motion failed for a lack of second.

Mr. Rohn asked Mr. Lehman if the message board scrolls or how it works.

Mr. Lehman stated it depends on how it's programmed. He went on to say they've done this in the past where conditions are placed on approvals. He went on to say the message can be static and programmed to display 24/7 and the Board can determine what kind of restrictions should be placed on the sign, such as no rotating messages, no flashing lights, limited hours of operation, etc.

Mr. Lauver asked if the bottom portion of the sign will also be illuminated.

Mr. Lehman acknowledged that it will be and that it will be light sensitive and illuminated dusk to dawn. He pointed out this sign can also be programmed to be illuminated on a particular schedule.

Mr. Deegan advised that if the Board is inclined to approve this request with restrictions, the zoning ordinance for EMC's has a number of criteria, so if you make a motion to approve, you can reference those in your recommendation. Among other criteria, it also references the intensity of the lighting.

Attorney Kolbus commented that if the Board recommends approval, a condition can be added that they meet the EMC standards in the ordinance.

Ms. Campbell asked for clarification of what the sign will look like.

Mr. Clark explained the lower portion of the sign will be a static ID sign and the upper portion will be the EMC portion of the sign.

Mr. Rohn asked Mr. Clark how often the sign will be changed.

Mr. Clark stated the plan is to change it weekly, but they want a sign that will allow them to also post events such as fundraisers or free breakfast for veterans. He went on to say there will be no scrolling or flashing lights and because the message board they currently use has a couple flashing lights, the new sign will look better than what they're currently using.

Action:

A motion was made and seconded, Rohn/Campbell, to adopt the findings of the Board and approve 23-09DV with the following conditions:

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. The electronic message center (EMC) portion of the sign shall adhere to Section 4280.2.G of the Goshen Zoning Ordinance.

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

23-10DV – Susan M Kyle requests a developmental variance to allow open parking in the front yard setback where open parking spaces are not permitted, for an approximately 400 SF driveway expansion. The subject property is generally located at 412 James Place and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained this is a single-family home with a one car garage and a narrow driveway. The petitioners would like to replace the concrete in the existing driveway and expand the driveway to the south in order to add an additional parking space. The parking space will be located in the front yard setback, requiring BZA approval.

Mr. Deegan noted that this request is warranted and that two parking spaces on a single family property is reasonable. Additionally, a parking space in this location will be able to meet the required 5' side setback. He pointed out there are at least two other properties on this street with open parking spaces and in 2020 the BZA approved a similar request around the corner at 509 Glenwood.

No public comments were received by the Planning Office regarding this request.

Petitioner Presentation:

Susan Kyle, 412 James Place, spoke on behalf of the petitioner. She stated she is familiar with the Staff recommendation and has nothing to add.

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 23-10DV with the 5 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

23-11DV – Dale E Klassen & Beverly K Lapp request a developmental variance to allow an approximately 432 SF detached two-story workshop 21' in height where the maximum height permitted for an accessory building shall not exceed the height of the residential dwelling on site. The subject property is generally located at 417 Gra Roy Drive and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained the petitioners are renovating the interior of the home and would also like to build an accessory structure along the north property line. The 432 SF, two-story building will be used for storage and a workshop, and will have an overall height of 21'. A developmental variance is required because the height of the home is 16' and accessory structures are not allowed to be taller than the

primary structure. He went on to explain that until April, 2017 accessory structures were limited to a maximum height of 14', but that rule was relaxed, allowing them to be no taller than the primary structure. Prior to that change, variances for residential building height was regularly sought. Today's request appears to be the first since the ordinance was changed in 2017.

Staff recommends approval of the request, noting that all other developmental requirements will be met. It will also be well behind the front wall of the home and approximately 70' to the front property line. He noted there is a dense mature tree canopy and the 5' height difference between the house and proposed accessory structure will make this less noticeable.

Mr. Deegan stated for the record that one inquiry was received regarding this request. He noted the property owner to the south inquired about the request, but had no comments regarding the proposal.

Petitioner Presentation:

Dale Klassen, 619 S 7th Street spoke on behalf of the petitioner. He stated the Staff Report covered everything, but wanted to add that there are no other accessory buildings on this property and the existing single car garage is not adequate. He noted the location was also carefully chosen so the view of the Millrace would not be obstructed.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Lauver asked for clarification on the side yard setback, noting the drawing shows 5' measured from the footprint and not the overhang.

Mr. Deegan stated the drawing in the packet shows the 5' setback measured from the building overhang which is the minimum. He also pointed out notes on the proposed plan indicate that setbacks are shown to overhangs of the workshop.

Mr. Lauver stated that information doesn't match the setbacks shown on the drawing on the last page of the packet.

Mr. Deegan stated his understanding from discussions with the applicant, was that the site plan showed setbacks from the overhang to the property line and asked the applicant to clarify.

Mr. Klassen verified that the 5' setback would be measured from the overhang to the property line.

Action:

A motion was made and seconded, Lauver/Rohn, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 23-11DV with the 3 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

VI. Administrative Appeals – public hearing items

23-01AA – Ronald E. Davidhizar and John William Davis, Jr., appeal the Zoning Administrator's decision that the Planning office could not review or approve a General (Remodel) Permit Request and the associated zoning clearance form because a second-floor only residence does not meet the Zoning Ordinance definition of single family dwelling and because a complete submittal was not received because dimensioned, labeled floor plans for each floor, with the use of all spaces labeled, were not provided. The subject property is generally located at 207 Queen Street and is zoned Residential R-2 District.

Ms. Yoder is present to discuss the two administrative appeals cases.

Staff Report

Ms. Yoder explained the decision she made was based on the zoning ordinance and discussed the following key points from her report to Board members:

- The zoning ordinance definition of single family dwelling, noting that a single floor in a multi-floor building does not meet that definition.
- Improvement location permit (zoning clearance) cannot be evaluated or issued without adequate information to confirm zoning ordinance requirements are met.
- A floor plan is necessary to confirm the square footage meets minimum zoning district requirements.

She noted that 207 Queen Street can be used as a single family detached dwelling, provided the entire structure is dedicated to the use and provided all developmental requirements are met. File history suggests the owner may want to use the property as a two or three unit dwelling, in which case an application should be made to the BZA for the specific use and for any developmental deficiencies.

Ms. Yoder also discussed the BZA rules of procedure in deciding an appeal, noting the Board's decision should be based on the zoning and/or subdivision rules and procedures, noting that the Board shall make a decision that upholds the intent and purposes of the ordinance. She advised that exceptions to the zoning ordinance should be granted through the variance process, not through appeals.

Petitioner Presentation:

Bill Davis, 116 E Clinton Street, spoke on behalf of the petitioner. He gave background information on why they are appearing before the BZA, noting that he and his client entered into an agreed judgement with the City (Building Department) to make improvements to this building, further explaining that the materials he presented to Board members addressed both buildings.

He pointed out that the packet provided by the Planning Office included a request for a building permit, and a copy of a motion for a rule to show cause, that has been filed in court. This ruling asks that certain repairs be made to the buildings. He acknowledged that Mr. Davidhizar would like to have a three unit building at 207 Queen Street.

Mr. Davis stated they were in negotiation with the Building Department for a while, but were unable to reach an agreement, and the Building Department is insisting the repairs get done so it's no longer an unsafe building. He noted that there have been no police or fire calls and no indication this building is unsafe. In order to satisfy the Building Department, they would like to finish one floor of the building for single family use, thereby showing the Building Department and the Planning Department that this is acceptable. He went on to say they could probably do the same thing on the other two floors of the building.

He asked Mr. Davidhizar to address how the buildings got to be in this shape and then address the issues.

Ron Davidhizar, 203 Middlebury Street, stated he purchased this property and wants to fix it up. He noted this part of town has a high water level which causes difficulties with basements. He explained this house always had a wet basement and when the foundation began to crumble, he realized something needed to be done. He went on to say he has other properties in the same block that also needed new basements. He explained over the years this house had two units, but because there's a new basement, he'd like to make a third unit. His plan for the house is a one bedroom apartment upstairs, and downstairs would likely be a two bedroom. The basement would be a two or three bedroom apartment. He pointed out the footprint of the house has not changed.

Mr. Holtzinger asked if this was previously a single family home.
Mr. Davidhizar stated it was a two unit previously.
Mr. Rohn asked how long Mr. Davidhizar has owned this property.
Mr. Davidhizar stated he was unsure.

Mr. Davis stated the material he provided to Board members is not a duplicate of materials provided by Planning Staff. Their request is for the Board to reverse the Zoning Administrator's decision to deny a zoning clearance for development of the second floor (ground level) of the building as a single family residence. He stated they disagree with Staff's interpretation of a single family dwelling in the zoning ordinance and also disagrees on what documentation the zoning administrator is authorized to require for purposes of determining whether or not a zoning clearance should be granted. He's asked that the BZA interpret what the zoning ordinance says and stated the Board should make a decision which upholds the intent and purposes of the ordinances, but it has to be based on the language in the ordinance itself.

Mr. Davis discussed definitions from the ordinance, including definitions of dwelling, single family, and his interpretation of open space. He asked if one floor of this building is developed as a single family residence, is it not considered a single family residence by the zoning ordinance. He explained there are many residential buildings with development on the top or ground floor, with apartments in a basement or attic space. He explained they're trying to satisfy the building department and in order to do that, they want to develop this as a single family. He also stated there is nothing in the ordinance that says the entire building has to be designed for use. This proposal will solve their problem with the building department and at some point they may come back to the BZA and ask to make this a duplex or triplex. He asked that the Board approve their request to develop a single family dwelling and that there should be no denial of the zoning clearance if it meets the requirements for a single family dwelling.

Mr. Davis' second concern is what documents should be required in order to decide if a zoning clearance should be granted or not. He stated those requirements are addressed in the zoning ordinance and the point of the materials to be provided is to know that the proposed structure conforms with the requirements of the zoning district. Requirements include a sketch plan and one was provided. It shows the dimensions of the property, the situation of the building on the property, and he states that this information is sufficient to make a decision as to whether or not this application should receive approval. He went on to say he understood Ms. Yoder requires a floor plan in order to determine whether or not it meets the zoning ordinance requirements. He agrees with Ms. Yoder that there is a square footage requirement for a one-floor building and that requirement is confirmed on the zoning clearance form. He stated a floor plan is not necessary to show that requirement is met.

Mr. Davis stated these same things apply to the property at 209 Queen Street and he doesn't feel the need to repeat them. He asked that these points be included in discussion for 209 Queen Street.

Attorney Kolbus stated he has a proposal for that when we get to the next hearing. He asked that the Board determine what the zoning ordinance means, what's required for the zoning clearance, if the second floor of this building can be built out, and if it's appropriate to come back to the BZA at a later time to ask for a duplex or triplex use.

Mr. Lauver questioned why they don't want to provide drawings with their proposal.
Mr. Davis stated if the Board allows them to move forward, but want drawings submitted, they will do that. He stated this is only an example of something that's not required in the ordinance. He stated it's his impression that builders don't come in with floor plans.
Mr. Lauver stated that he's never submitted for a building permit without providing a complete layout.
Mr. Rohn agreed that a complete set of drawings are required in order to obtain a building permit.

Ms. Yoder remarked if Mr. Davis wants to discuss both cases at once, that is acceptable. She followed up on Mr. Davis' remarks that "use by a single family" if taken to its logical conclusion, would mean that any residential structure occupied by only one family, is a single family home. As an example, she noted if an 18 unit apartment building only houses one family it would mean this would be considered a single family dwelling. She said the definition is clear that a single family detached structure is meant to be occupied by one family and a multi-unit has multiple dwellings in a single structure.

Mr. Davidhizar stated he would like to develop three apartments in one building and four apartments in the other. He stated these structures are not doing anyone any good at this point and he wants to provide more housing. He noted the house that he would like to make a three-unit was previously a two-unit and the house that he wants to make a four-unit, was previously a three-unit.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Holtzinger asked Attorney Kolbus on guidance on how to proceed.

Attorney Kolbus stated the board can adopt the staff analysis and deny the appeal or they can adopt the material submitted by Mr. Davidhizar and Mr. Davis and grant the appeal.

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, deny 23-01AA with the reasons listed in the Staff Report. The motion passed by a vote of 4-0 (1 abstention-Campbell).

23-02AA – Ronald E. Davidhizar and John William Davis, Jr., appeal the Zoning Administrator's decision that the Planning office could not review or approve a General (Remodel) Permit Request and the associated zoning clearance form because a second-floor only residence does not meet the Zoning Ordinance definition of single family dwelling and because a complete submittal was not received because dimensioned, labeled floor plans for each floor, with the use of all spaces labeled, were not provided. The subject property is generally located at 209 Queen Street and is zoned Residential R-2 District.

Attorney Kolbus asked for the Board to make a motion to incorporate the materials and testimony from 23-01AA into 23-02AA and allow the petitioner to add any materials they want, or rest on what they said the first time.

Action:

A motion was made and seconded, Potuck/Lauver, to incorporate the materials and testimony from 23-01AA into 23-02AA. The motion passed by a vote of 4-0 (1 abstention-Campbell).

Attorney Kolbus asked if Ms. Yoder has anything further to add.

Ms. Yoder responded that she does not.

Attorney Kolbus asked Mr. Davis is he has anything to add.

Mr. Davis voiced his disappointment about the previous vote and was sorry that it was presented as a yes or no. He noted that Mr. Lauver raised a question about the floor plans and they are willing to go along with that. Concerning the issue about what a single family dwelling is, he hoped the Board would

seriously consider and not extend the definition to say that it must be an improvement of a whole house. He stated that this is not in the ordinance and he asked the Board to reconsider a split decision and grant the appeal for a single family home.

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, deny 23-02AA with the reasons listed in the Staff Report. The motion passed by a vote of 4-0 (1 abstention-Campbell).

VII. Audience Items
None

VIII. Staff Board Items
None

IX. Adjournment: 5:15 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