

Minutes - Goshen Board of Zoning Appeals
Tuesday, June 27, 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: Bethany Campbell, Tom Holtzinger, Hesston Lauver, Lee Rohn, and Michael Potuck. Also present were Assistant City Planner Rossa Deegan, and Assistant City Attorney James Kolbus.

II. Approval of Minutes from 5/23/23: Potuck/Lauver 5-0

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

IV. Postponements/Withdrawals - None

V. Use & Developmental Variances – public hearing items

23-13DV –Maple City Health Care Center, Inc. requests a developmental variance to allow an illuminated freestanding sign approximately 15 SF in area and 4’ in height where only ground signs not exceeding 3’ in height and 8 SF in aggregate area are permitted. The subject property is generally located at 213 & 215 Middlebury Street, includes six tax parcels and two parking lots, and is zoned Residential R-1 District.

Staff Report

Mr. Deegan described the R-1 property, explaining it includes two buildings and two parking lots, and has obtained multiple use and developmental variances from the BZA. Today’s request is to replace an existing free-standing sign, which the Planning Office doesn’t find approval for, so he referred BZA members to a drawing of the proposed sign in the packet. He explained a developmental variance is required because the proposed sign is 4’ in height and 15 sf in area, and because the property is zoned Residential R-1, the only permitted signs are ground signs not exceeding 3’ in height and 8 sf in area. Staff recommends approval of the request noting that the relatively small sign will not upset the character of the area.

No inquiries were received from the public regarding this request.

Petitioner Presentation:

Rocio Diaz, representing Maple City Health Care, 213 Middlebury Street, spoke on behalf of the petitioner. She stated they’re requesting this sign to match the signs at the Vista location, the former Abshire Mansion, so branding is consistent throughout their properties.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

None

Action:

A motion was made and seconded, Potuck/Campbell, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 23-13DV with the 5 conditions a listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

23-14DV – Cassandra A Beachy & Christopher K Beachy and Ken Beachy request a developmental variance to allow two primary buildings where only one is permitted for the construction of an approximately 714 Sf detached garage and dwelling unit in addition to an existing home. The subject property is generally located at 511 S Winter Avenue and is zoned Residential R-2 District.

Staff Report

Mr. Deegan explained this property currently contains a one story home with a detached garage and is located on a lot approximately one-third acre in size. The property is zoned Residential R-2 which permits single and two family homes. The proposal is to demolish the existing garage and rebuild with a second story dwelling. A developmental variance is required for two primary structures on the property because although the R-2 permits two-family homes, they have to be in the same structure. Approval is justified because this is a large property and all developmental requirements will be met, including adequate onsite parking.

The Planning Office received two phone calls regarding this petition. The first was from Kirk Miller, 1302 Prairie, who stated he is not opposed to the variance, but has some concerns about the possibility of the garage being used as a rental in the future. Mr. Deegan pointed out to BZA members that rentals of single family and duplex uses are generally permitted without a public hearing. The second call was from Shannon and Skyler Gard, 1303 Berkey Avenue, who stated they support this request and are happy to see improvements to the neighborhood.

Petitioner Presentation:

Christopher K Beachy, 511 S Winter Avenue, spoke on behalf of the petitioner. He stated they have no intention of moving anytime soon, explaining the intention is to raise their family in a multi-generational home. He also provided a letter to Board members (23-14DV-1) that had been received from a neighbor at 1202 Prairie, voicing their support of this request.

Ken Beachy, 511 S Winter Avenue, also spoke to the petitioner. He clarified that this is not a total demolition of the garage. The plan is to remove the roof, add the second floor and reinstall the roof.

Audience Comments:

None

The public hearing was closed.

Staff Discussion:

None

Action:

A motion was made and seconded, Potuck/Rohn, to adopt the Staff recommendations as the findings of the Board and approve 23-14DV with the 6 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

23-15DV – James B Shenk & Rachel A Shenk request developmental variances to allow a front building setback of 5' from Cottage Avenue where 25' is required and a side (south) building setback of 1' where 5' is required for the construction of an approximately 440 SF detached garage. The subject property is generally located at 606 S 7th Street and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained this R-1 property is a narrow lot, with frontage on 7th Street and Cottage Avenue. The property contains a single family home and a detached garage. The petitioners would like to remove the existing garage and rebuild a larger garage (approximately 440 sf) with one garage stall, a workspace, and a porch. Proposed setbacks are 5' from Cottage Ave, where 25' is required, and a 1' setback from the south property line where 5' is required. Staff recommends approval, noting that two properties with similar requests have been approved in the recent years. He explained while some homes front Cottage Avenue, the majority of the homes do not and Cottage Avenue functions more as an alley. Because a 5' setback along an alley meets setback requirements, staff feels this request is reasonable. He also noted that the 1' side setback will match the existing garage, explaining there is a utility pole in the alley, midway

between the north and south property lines, and it appears the garage could not be accessed without moving the driveway and stall to the south.

No public inquiries were received regarding this request.

Petitioner Presentation:

Rachel A Shenk, 606 S 7th Street, spoke on behalf of the petitioner. She stated the existing structure cannot be used for a garage and because parking is sometimes difficult on 7th Street, they would like to add a new garage.

Audience Comments:

None

The public hearing was closed.

Staff Discussion:

None

Action:

A motion was made and seconded, Rohn/Lauver, to adopt the Staff recommendations as the findings of the Board and approve 23-15DV with the 6 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

23-05UV – Michael Thompson requests a use variance to allow an event center (auditorium) where auditoriums are a permitted use in the Commercial B-2 & B-3 districts and Industrial M-1 & M-2 districts. The subject property is generally located at 1001 & 1003 N Main Street and is zoned Commercial B-1 District.

Staff Report

Mr. Deegan explained this nearly 5 acre site contains a one-story, two-unit building, fronting Main Street. One of the units contains a pizzeria and the second unit, which once contained a bar/nightclub, is now vacant. Zoning for the property is Commercial B-1 which is a neighborhood commercial use. He went on to say there is a mix of residential and commercial uses on surrounding properties, including the Salvation Army, Moose Lodge, and Moose Lodge campground.

Today's request is to use the vacant portion of the building for an event center. There will be no change to the exterior of the building and the interior will remain nearly the same. Floor plans show the seating capacity for 130 people and the parking plan submitted indicates ample parking for both uses. He stated Staff recommends approval of the request, noting other City departments and INDOT appear comfortable with the plans. He pointed out some of the conditions listed in the staff report include that the parking spaces be delineated within 30 days, and a vehicle with expired plates, parked in the front-yard setback, should be brought into compliance with the ordinance.

Planning received two phone calls regarding this request. The first caller stated opposition to the request and the second caller asked for details, but offered no additional comment.

Petitioner Presentation:

Michael Thompson, PO Box 396, Union, MI spoke on behalf of the petitioner. He stated he has spoken with some of the neighbors who commented that there was excessive noise when a bar was there and they have concerns that having an event center here might also create a lot of noise. He commented that he has no interest in dealing with drunk people and explained that his contract states there is to be no alcohol. He went on to say if alcohol is a problem, the police are called, the contract is done with no refund, and everyone must leave. He also stated there won't be any 2:00 am parties because he's looking to book events such as birthday parties, wedding receptions, and family oriented events. He anticipates events will be over no later than 10:00 pm. He went on to say his contract also has stipulations on the noise level and if the police are called, the party is over and everyone needs to go home. He stated he knows how important it is to keep neighbors happy.

Mr. Holtzinger asked if this means there will be no liquor license.

Mr. Thompson stated neither the pizzeria or the event center have, or will have, a liquor license.

Mr. Thompson continued by announcing that firearms will not be permitted inside the building and anyone with a firearm will need to keep it in their locked vehicle. He stated he feels he's doing everything he can to run a legitimate operation and to prevent any issues with his neighbors.

Mr. Rohn asked if the parking lot can be striped within the 30 day timeframe as requested by Staff.

Mr. Thompson stated he doesn't know if he can get it done that quickly, but feels it's to his advantage to do so and will get it done as soon as possible.

Mr. Rohn asked if the car that's sitting on the lot will be addressed.

Mr. Thompson stated it will be moved.

Mr. Lauver asked who set the building capacity.

Mr. Thomson stated it is set by the fire department.

Audience Comments:

Nancy Josselyn, 101 W Wilden Avenue, spoke to the petition. She stated one of the lots is full of trees and if the trees will be cut down, she is not in favor of the request. If the trees remain, she is okay with the request.

Mr. Deegan noted the plans provide indicate they will keep the existing paving and there is no indication anything will be done with the trees at this time.

Maria Castaneda, 103 W Wilden Avenue, also spoke to the petition. She stated she doesn't feel there is enough parking for the maximum permitted occupancy.

Mr. Deegan stated the parking was reviewed by Staff and they found the site plan to be sufficient.

Mary Jo Pratt 926 N Main Street, also spoke to the petition. She stated she lives across the street from the property and is concerned about the capacity and if there will be enough parking. She also indicated she was concerned that the zoning will allow an industrial use at some point.

Mr. Rohn read from the staff report, explaining where an event center is permitted.

Ms. Pratt stated if small businesses are permitted here, neighbors have no way to know future plans.

Attorney Kolbus explained if this variance is approved it cannot be used for anything else that is not already a permitted use in this zoning district.

The public hearing was closed.

Staff Discussion:

Attorney Kolbus noted if the Board is concerned about negative effects to the neighborhood, they can include a time limit on the variance requiring them to return for a new hearing and variance at some point.

Mr. Lauver asked if the petitioner's contract can become part of our agreement.

Attorney Kolbus stated it would be best to list items from the contract that you want and they can be included in a commitment form. Those items could include no alcohol, a timeframe for events, and any restrictions the Board feels is necessary.

Mr. Rohn would like to see approval for two years with a return to the BZA. He suggested Sunday-Thursday events should cease by 10:00 pm and permit Friday & Saturday events to run until 11:00 pm.

Mr. Holtzinger questioned if 11:00 pm for everyday would be more acceptable.

Mr. Rohn stated he feels 10:00 pm is appropriate for week nights.

Mr. Holtzinger added that no alcohol shall be permitted.

Mr. Holtzinger requested that Mr. Thompson return to the podium and acknowledge if he is agreeable to these terms.

Mr. Thompson stated most of the parties will likely be over by 10:00 pm, but it takes a while to clean up and close down.

Mr. Rohn suggested that the event should be over by 10:00 pm or 11:00 pm, with additional time allowed for cleanup. Attorney Kolbus suggested language for the event can be referred to as main event and prep or take down.

Action:

A motion was made and seconded, Rohn/Potuck, to adopt the Staff recommendations as the findings of the Board and approve 23-05UV with the following 8 conditions and 4 commitments:

Conditions:

1. If a Building permit is required, the variance shall become null and void unless a Building permit has been issued and substantial progress has been made within six (6) months of the date of BZA approval.
2. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.
3. The BZA approval shall be effective when the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff and when all conditions of approval have been met.
4. An approved zoning clearance form is required.
5. No zoning clearance form will be issued until the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff and until all conditions of approval have been met.
6. Approval by the Building and Fire Departments is required.
7. The parking and driving areas shall be permanently striped based on the parking layout “1001 & 1003 N Main Street Parking Plan—June 7, 2023” within thirty (30) days of this approval.
8. The vehicle with expired plates illegally parked on the patio area in the front yard setback shall be moved to a lawful parking space and registered with current license plates within thirty (30) days of this approval.

Commitments:

1. If the variance is not implemented and expires, this Commitment automatically terminates as well, and the Zoning Administrator may execute and record a Termination of Commitment on behalf of the City of Goshen Board of Zoning Appeals.
2. The variance is approved for a period of two (2) years from the date of June 27, 2023; following the period of two (2) years, a new variance request must be heard by the City of Goshen Board of Zoning Appeals with a new application and a new public hearing.
3. Hours of operation shall be limited as follows: Sunday through Thursday, event activities shall cease no later than 10:00 p.m., with an additional one hour allowed for cleanup; Friday and Saturday event activities shall cease no later than 11:00 p.m., with an additional one hour allowed for cleanup.
4. No alcohol consumption is permitted on the premises.

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

23-16DV – Loupa’s Enterprise, LLC, Robert Keim, and Turkey Creek Construction request a developmental variance for a side (north) building setback of 5’ where 8’ is required for an approximately 1,088 Sf second story expansion. The subject property is generally located at 819 Lincolnway East and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained this single family home is located in the R-1 zoning district and surrounding properties are a mix of residential and commercial uses. He noted the former Double D’s property is immediately south of this property and is under the same ownership. He explained this is a one-story home with living space in the attic. The existing home has a north (side) setback, measured from the overhang, of approximately 5’ where 8’ is required. The petitioners would like to add a second floor to the home and raising the roof. In order to meet the existing 5’ side setback of the first story, a developmental variance is required. Staff recommends approval of the request noting the distance between this home and the one to the north is approximately 19’ and meeting the 8’ setback would be impractical. He asked Board members to look at condition #5 of the recommended conditions in the Staff Report. He explained that a number of years ago, the BZA allowed the Double D’s property to expand its paved parking area onto this residential property, but we never received a recorded easement for that parking area. He explained that this variance allows us to get that into place in case this property is sold sometime in the future,

Petitioner Presentation:

Lynn Hochstetler, 9425 N 850 E, Syracuse, spoke on behalf of the petitioner. He stated the owner would like to add the second floor to make this house more livable. He also noted that he had spoken with Abonmarche earlier today and asked them to prepare the paperwork for the easement.

Audience Comments:

None

The public hearing was closed.

Staff Discussion:

Mr. Lauer stated he recommends approval, but if the ownership changes they have to have the ability to remove the parking.

Mr. Deegan noted that this is relatively minor because the previous ownership of the properties was the same and it remains that way with the recent sale of the home and the former Double D's property. He explained that if the house is sold off in the future, the new owner could say they don't want the concrete. He went on to say if they remove it, there's not a lot of parking for the Double D's site. There is also some stormwater retention on the residential property. Having the easements recorded would prohibit any such future problems.

Action:

A motion was made and seconded, Lauer/Campbell, to adopt the Staff recommendations as the findings of the Board and approve 23-16 DV with the 5 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: 4:48 pm Lauer/Potuck

Respectfully Submitted:

/s/ Lori Lipscomb
Lori Lipscomb, Recording Secretary

Approved By:

/s/ Tom Holtzinger
Tom Holtzinger, Chair

/s/ Lee Rohn
Lee Rohn, Secretary