

Minutes - Goshen Board of Zoning Appeals
Tuesday, November 28, 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: Hesston Lauver, Tom Holtzinger, Lee Rohn, and Michael Potuck. Also present were Assistant City Planner Rossa Deegan, and Assistant City Attorney Don Shuler. Absent: Bethany Campbell.

II. Approval of Minutes from 10/24/23: Lauver/Rohn 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

23-08UV & 23-28DV – Matthew Miller & Kevin Carr request a use variance to allow an automobile detail and dent repair business where automobile repair and body shops are conditional uses in the Commercial B-3 District and permitted uses in the Industrial M-1 & M-2 Districts, and developmental variances to allow one illuminated window sign approximately 5 Sf in area and 16 non-illuminated vinyl window signs each approximately 8 SF in area where only ground signs are permitted not exceeding 8 Sf in aggregate area. The subject property is generally located at 711 W Lincoln Avenue and 104 Huron Street and is zoned Commercial B-1 and Residential R-3 Districts.

Staff Report

Mr. Deegan referenced the zoning aerial noting the site location is part of two zoning districts B-1 and R-3. He said this property is on the north side of Lincoln Avenue, just north of Linway Plaza. He noted the four commercial zoning districts on the aerial, B-1, B-2, B-3 and B-4, are all adjacent to this along with the residential neighborhood R-3. He mentioned on the property there was a single family home and a large existing commercial building. He gave examples of past businesses that were located there and described the two parts to the request before them. Part one allowing an auto detail and dent repair in the large commercial building and the second part for allowing signs in excess of what is permitted in the Zoning Ordinance. He described proposed services the auto detail and repair shop would provide, noting vehicles are currently washed off site but they would like to use a bay at the northeast corner of the building to do that. He added all work on the vehicles will be done indoors, primarily at the west portion of the building which is zoned R-3. He said some of the existing signs can be approved by staff, not including the illuminated window sign and 16 proposed vinyl window signs which need the Board's approval.

Staff recommends an amended approval for the signs reducing them to two non-illuminated window signs in addition to one illuminated window sign which would keep it consistent with other commercial properties. He stated approval of the auto repair business is warranted with conditions and commitments as specified in the packet. He went on to point out a few of the conditions noting #3-6 are important as the property is in the regulatory floodplain and those conditions need to be dealt with to meet requirements. He also added that #6 states the building must be brought into compliance with Building and Fire Code in forty-five days. Next, he touched on commitments noting #2 defines what type of auto body and repair work can be done; #4 prohibits outside storage; and #5 prohibits outside display; #6 ensures they obtain approval from Engineering to use the bay for vehicle washing; #7 limits the types of vehicles that can access the site; and finally #8 addresses meeting Flood Protection Grade for storage of chemicals.

The Planning Office did not receive any public comments on this request.

Petitioner Presentation:

Matthew Miller, 68548 C.R. 33, Goshen, Indiana, stated David is the tenant who could probably describe the plans better and asked if anyone had questions for him. Mr. Rohn asked if they foresaw any issues with bringing the building up to code per conditions or meeting the commitments outlined in the staff recommendation? Mr. Miller replied no he did not see an issue and stated he personally was not there when Building and Fire did a walk through so he wanted to talk to them about a few items. Mr. Deegan explained if it proceeds with approval, to contact the Planning office the next day so he can be put in touch with Building and Fire inspectors.

Kevin Carr, 7984N 625W, Nappanee, Indiana, described the operation as “super green”, environmentally safe and included paint-less dent repair and vehicle wraps. He expressed they would like to get approval to wash the cars on site, but they could keep doing them off site if the Board decided against it. Mr. Carr then presented the board with a proposal from Premiere Signs for vinyl window signs and passed out copies of proposal to board. Let it be noted this proposal was different from what was submitted in the request. Mr. Potuck asked if it was for 16 window signs or less? Mr. Carr explained it would go on 8 windows. Discussion followed regarding what was requested, what the Zoning Ordinance allows, and what the staff recommended. Mr. Carr explained the new proposal would eliminate the ribbon at the top and the ribbon at the bottom of the windows and replace it with one going across the middle, from 16 to 8 window signs.

Audience Comments:

None

The public hearing was closed.

Staff Discussion:

Staff discussed new sign request and Mr. Deegan reiterated that the staff is not recommending approval of something that large for a residential zoning district, however they would allow the proposed illuminated window sign of 5 SF and up to two 8 SF vinyl window signs. A discussion ensued on how the new proposal is less than the original proposal, but still more than what is permitted in the ordinance.

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 23-08UV & 23-28DV with the 7 conditions and 8 commitments as listed in the Staff Report. The motion passed unanimously by a vote of 4 to 0.

23-29DV – Paul & Rebecca Shetler Fast and Kauffman Construction request a developmental variance to allow an 8' front building setback where 35' is required for an approximately 302 SF garage addition and home remodel. The subject property is generally located at 1209 Berkey Avenue and is zoned Residential R-2 District.

Staff Report

Mr. Deegan explained it is a single family home located in the West Goshen neighborhood zoned R-2. He said the home is two-stories with an approximate footprint of 1,134 SF and an approximately 720 SF detached two-stall garage was recently built. He went on to describe the proposed changes including the addition of a single stall attached garage. He noted the garage would have an 8' front set back where 35' is required, therefore, a developmental variance is needed. He stated while the home is less than the average setback of 11' there is a home directly west with a 6' front building setback. He went on to say that overall the project is in line with characteristics of the street and block.

The Planning Office did not receive any public comments on this request.

Petitioner Presentation:

Nate Kauffman, 5593 Fir Rd., Bremen, Indiana. He stated he did not have much to add except that the home has not seen a lot of investment over the years and there have been some additions cobbled onto it which they are proposing to remove during the remodel to beautify the neighborhood. Discussion followed on how the home had been a rental, but will now belong to the parents of a family who live next door. Mr. Lauver asked if they could complete the renovations within the specified six-month time frame. Mr. Kauffman agreed it could be done.

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 based on these findings, approve 23-29DV with the 6 conditions as listed in the Staff Report. The motion passed unanimously by a vote of 4 to 0.

23-30DV – Justin & Kari Tarmar request a developmental variance to allow a 1' side (north) setback where a minimum of 5' is required for the installation of an approximately 96 SF storage shed. The subject property is generally located at 312 S 5th Street and is zoned Commercial B-2 District.

Staff Report

Mr. Deegan explained this property is a quarter-acre lot directly south of the City Annex Building. Noting it is zoned B-2 with a single-family home and a large duplex at the rear of the property that appears to be a former carriage house. He said the petitioners recently installed an approximately 96 SF storage shed on the property without zoning clearance approval and they are now seeking that approval. He stated it currently has a 1' setback from the north property line where 5' is required from the side yard so a variance is needed. He explained this request is relatively difficult to substantiate with regards to the criteria that deal with practical difficulties as there is ample room on the property including within the existing footprint of the buildings for storage.

Staff recommends approval of this request based on the proposed location if it maintains a safe 5' setback from the rear property line as it is a small, inconspicuous shed.

The Planning Office did not receive any public comments on this request.

Petitioner Presentation:

Justin Tarmar, 312 S. 5th Street, Goshen, stated he agreed with most of what the staff said and clarified that the rear building is a former carriage house that is currently two rentals. He said those units are practically leased all of the time and are not viable for storage for his family as the units are occupied. He explained the small storage shed is encompassing everything they need for outdoor equipment, ladders and stuff needed for maintenance. He went on to say they removed an older shed that was falling down in bad shape that had a similar setback. Discussion followed regarding the location of the old shed, which was not in the same place as the current one, and if the new one was moveable, which it is.

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 based on these findings, approve 23-30DV with the 4 conditions as listed in the Staff Report. The motion passed unanimously by a vote of 4 to 0.

23-31DV – Alberto & Carolina Sanchez request a developmental variance to allow a 2' side (west) setback where 5' is required for an approximately 570 SF gazebo and carport over a concrete patio and parking area. The subject property is generally located at 519 Van Gilst Drive and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained the property is a single family home in North Meadow estates, zoned residential R-1, and is completely surrounded by single family homes. He stated petitioners are seeking approval for work that has already been done as they installed an approximately 570 square foot open air structure used as a gazebo over a concrete patio. He said petitioners have also parked a vehicle in this area and would like to do so again when the correct approvals are in place. He noted the structure has a 2' setback from the west property line where 5' is required so a developmental variance is needed.

Staff recommends approval given the grading in the backyard would make it difficult to install a similar structure in that location. He noted that if the board approves, the area cannot be used as a carport until a connection is made between the driveway and that pad. He stated staff recommends that a BZA stipulation require that this connection is hard surface.

The Planning Office did not receive any public comments on this request.

Petitioner Presentation:

Alberto Sanchez, 519 Van Gilst Drive, Goshen, Indiana, stated he always wanted to have a patio and gazebo for his family to relax under and agreed with staff that the backyard is too slanted for this. Mr. Rohn asked if he parked a vehicle under there. Mr. Sanchez explained not normally, he was helping his son after hitting a pothole. A discussion followed that concrete would have to be placed there if a vehicle would be parked in that location. The petitioner agreed and stated it would have to wait until next year when the weather warmed up.

Audience Comments:

None

The public hearing was closed.

Staff Discussion:

None

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 23-31DV with the 5 conditions as listed in the Staff Report. The motion passed unanimously by a vote of 4 to 0.

23-09UV – Goshen Community Schools request a use variance to allow a dust collector enclosed by a fence 12' in height at a distance of 73' from adjacent residential uses along Cottage Avenue where 100' is required for such equipment, for a technical school classroom. The subject property is generally located at 419 S 8th Street and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained Planning files indicated the property was used as an elementary school dating as far back as 1850s and in August of this year use of the building changed to technical school classes for the high school. He said the former gym in the building is now being used as a shop class and a dust collector is needed to remove particulates from the air. He noted Goshen Schools is wanting to add the dust collector to the exterior of the west side of the building placing it approximately 73' feet from an adjacent residential property where a minimum of 100' is required. He stated this is going to require a use variance because the 100' setback is part of the conditional use requirements for schools. He went on to say that the dust collector right now is at the high school and is going to be moved to this new location. He said that when it is installed it will be enclosed with a 12' fence in an area approximately 280 SF.

Staff recommends approval with a number of conditions and commitments. Mr. Deegan stated the primary concern is the impact this type of machinery would have on adjacent residences. He explained that staff is recommending requiring that 12' fence and would like to add the addition of sound blocking material to adequately reduce noise. He stated the dust collector should only be used for school purposes during daytime hours and the tree being removed from the property should be replaced with either a large species evergreen tree or five narrow evergreen trees.

The Planning Office did not receive any public comments on this request.

Petitioner Presentation:

Don Ritter, 12080 Camelot Trail, Milford, Indiana, stated he is the school's facility director and managing the project. He said the school decided to change the use of the building and moved the construction class over to this building. He explained they wanted to expand the project and it requires this dust collector to collect the dust off of the saws and equipment. He stated they had added air filtration systems, but it is not sufficient.

Mr. Holtzinger asked about the decibels the dust collector created. Mr. Ritter explained it is 82.9 dBA, which was equivalent to about traffic traveling by. Discussion followed regarding noise and the sound material proposed that could eliminate up to 28 decibels. Mr. Holtzinger asked the petitioner if he would be opposed to a requirement to add the sound material to reduce noise by 28 decibels? Mr. Ritter stated they did not have a problem with that. Mr. Holtzinger added the sound barrier would reduce noise to approximately 55 decibels. Mr. Ritter explained his plans for the installation of a fence with sound reduction material. Discussion followed having a stipulation that the dust collector should only be run during the daytime hours of 8:00-5:00 PM and should not be used for an evening class.

Audience Comments:

None

The public hearing was closed.

Staff Discussion:

The board discussed amending commitment #4 to read, “The dust collector shall be enclosed by a fence 12’ in height, and the fences shall be covered on all sides by a sound control material that reduces sound a minimum of 28 decibels.”

Action:

A motion was made and seconded, Potuck/Rohn, to adopt the amended Staff recommendations as the findings of the Board and based on these findings, approve 23-09UV with the 5 conditions and 5 commitments as listed in the Staff Report with the addition of the sound barrier. The motion passed unanimously by a vote of 4 to 0.

23-10UV – Lifepoint Church of God of Goshen, Indiana and Bright Point request a use variance to allow use of a room in an existing church for a social service organization where business offices are a conditional use in the Commercial B-1 District and a permitted use in the Commercial B-2, B-3, B-4 and Industrial M-1 & M-2 Districts. The subject property is generally located at 1006 S 16th Street and is zoned Residential R-1 and Residential R-2 Districts.

Staff Report

Mr. Deegan explained this is an almost 5-acre church property with frontage on 16th Street and Fairfield Avenue and it is a short distance west of the Lincolnway East corridor. He stated the main building on the property is a church sanctuary which also includes offices and a gymnasium with over 200 on-site parking spaces. He noted the property is zoned R-1 and R-2 and surrounding properties are predominately residential. He said the church would like to allow the use of one of the rooms for the office of a social service organization and that while churches are a conditional use in the R-1 and R-2 districts, business offices are not permitted so a use variance is required.

Staff recommends approval of the request for one room to be used for an office. Mr. Deegan referenced the site layout in the packet to note the proposed location of the office and noted there is ample parking for both uses.

The Planning Office did not receive any public comments on this request.

Petitioner Presentation:

Anthony Cottrell, 512 Noelwood Drive, Goshen, Indiana, introduced himself and said he did not have anything to add to the staff report.

Audience Comments:

None

The public hearing was closed.

Staff Discussion:

None

Action:

A motion was made and seconded, Potuck/Lauver, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 23-10UV with the 4 conditions as listed in the Staff Report. The motion passed unanimously by a vote of 4 to 0.

23-32DV – Maria Y Oliva and Vanessa Mangan request a developmental variance to allow demonstrated onsite parking on an existing concrete driveway where open parking is not permitted in the front yard setback. The subject property is generally located at 716 N 7th Street and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained this is a single family home on the corner of 7th and East Street on the north side of Goshen. He said petitioners are proposing to remodel the existing attached garage to make it occupiable space which would eliminate the two parking spaces that would be considered the demonstrated on-site two parking spaces for vehicles. He reminded the board that single family homes have a requirement of two on-site parking spaces. He stated petitioners are proposing to use the open parking area of their driveway that comes off 7th Street and this will need a developmental variance because the demonstrated parking is open parking in the front yard. He said that staff report notes this does not meet the practical difficulties criterion because the petitioners have ample room in the rest of the property to add occupiable space, such as in the backyard. He stated still approval can be granted based on similar open parking occurring on adjacent properties, therefore staff recommends approval of the request.

The Planning Office did have a phone call from owner of 805 Arehart which was a general inquiry with no comments in support or opposition.

Petitioner Presentation:

Petitioner was not present.

Audience Comments:

Carla Munoz (aka) Carla Bocanegra, 412 East Wilden Avenue, Goshen, Indiana, stated her backyard is attached to their backyard. She stated that she thinks they should be able to do it if they can.

The public hearing was closed.

Staff Discussion:

A discussion followed on the aerial map showing gravel parking for two cars and how that parking was existing prior to 2003 records. Mr. Deegan explained that after that time, requirements for hard surface parking were instituted and to his knowledge there was not Board of Works approval either for the gravel or a second driveway. He said a conforming driveway coming off 7th Street is the appropriate place to make this request. Discussion continued on how the proposed parking area meets setback and standards.

Action:

A motion was made and seconded, Holtzinger/Lauver, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 23-32DV with the 4 conditions as listed in the Staff Report. The motion passed unanimously by a vote of 4 to 0.

23-33DV – Amanda Pedroza requests a developmental variance to allow a fence 6' in height where 4' is permitted in the front yard setback along Burdick Street. The subject property is generally located at 1017 S 14th Street and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained this is a single family home on the corner of 14th and Burdick Street. He said surrounding properties are also single family homes and zoning is R-1. He stated in July 2022, petitioner received approval for a fence 4' in height running east-west through the front yard along Burdick Street and a conditional use permit for a child care in the home was approved around the same time. He added the fence was a requirement for the child care home to allow children to play outside. Mr. Lauver asked for clarification on if the fence was supposed to be 6'. Mr. Deegan explained the petitioner was approved for a 4' fence and there was no stipulation in the conditional use for a child care home for the size of the fence, however, they installed a 6' fence and that is not permitted. He said a developmental variance is now needed.

Staff recommends approval based on the fact that the true front of the home faces 14th Street, so Burdick Street serves more as a side yard in this case. He noted the 6' fences is in line with the home and does not stick out into the yard in anyway nor does it appear to upset the character of the neighborhood. He also pointed out a couple of possible zoning violations present and asked the board to approve the request with conditions to address them, which includes removing a large trailer from the property and reseeding grass where a vehicle had been parked on an uninapproved surface.

The Planning Office receive public comments from numerous property owners on this request. The owner of 1014 S. 14th Street stated she was not in opposition but was concerned that the fence was there to conceal some non-residential activity. The owner of 1010 S. 14th Street had a similar comment saying she was not opposed to the fence but wondered why it was needed and also commented that the trailer parked on the property created traffic issues. Mr. Deegan stated including the conditions to resolve those zoning matters would be helpful in this case.

Petitioner Presentation:

Amanda Pedroza, 1017 South 14th Street, Goshen, Indiana, stated in regards to the violations that the trailer has already been removed along with other stuff at the side of the house. She said they will plant more grass next summer. She explained she has a licensed daycare and installed a 6' fence to ensure the safety of the children. Discussion followed that petitioner is not hiding any activities and the fence was to keep the children at the daycare safe.

Audience Comments:

None

The public hearing was closed.

Staff Discussion:

None

Action:

A motion was made and seconded, Potuck/Lauver, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 23-33DV with the 5 conditions as listed in the Staff Report. The motion passed unanimously by a vote of 4 to 0.

VI. Audience Items

None

VII. Staff Board Items

- *2024 BZA Calendar*

Mr. Deegan explained the BZA calendar is set by the Plan Commission and is being provided so members are aware when 2024 meetings will be held. No action is required from Board members.

VIII. Adjournment: 4:57 pm Lauver/Potuck

Respectfully Submitted:

/s/ Theresa Cummings

Theresa Cummings, Recording Secretary

Approved By:

/s/ Tom Holtzinger

Tom Holtzinger, Chair

/s/ Lee Rohn

Lee Rohn, Secretary