

Minutes - Goshen Board of Zoning Appeals  
Tuesday, January 22, 2008, 4:00 p.m.  
Council Chambers, 111 E. Jefferson Street  
Goshen, Indiana

I. The meeting was called to order with the following members present: Karen Fairfield, Ardean Friesen, Angela McKenna, and Jay Rounds. Also present was City Planner Joe Hauflaire and Attorney James Kolbus.

II. Jay Rounds noted the BZA appointments:

- Ardean Friesen – *reappointed by the Mayor for a term of four (4) years*
- Karen Fairfield – *reappointed by Mayor for a term of four (4) years*

III. Election of Officers for 2008

A motion was made and seconded, McKenna/Fairfield, to elect Ardean Friesen as chair for 2008. A motion was made and seconded, McKenna/Rounds, to close the nominations for chair. Both motions passed, 4-0.

A motion was made and seconded, McKenna/Fairfield, to elect Jay Rounds as vice chair for 2008. A motion was made and seconded, Friesen/Rounds, to close the nominations. Both motions passed, 4-0.

A motion was made and seconded, McKenna/Friesen, to elect Karen Fairfield as secretary for 2008. A motion was made and seconded, Rounds/McKenna, to close the nominations. Both motions passed, 4-0.

IV. Approval of Minutes from 12/18/07: Rounds/McKenna, 4-0.

V. The Zoning/Subdivision Ordinances were unanimously filed into Record: Fairfield/Rounds, 4-0.

VI. Postponements/Withdrawals: none

VII. Use Variances

- 08-01UV** Travis Peak & Steffen Schrock request a use variance to permit a two (2) unit residential dwelling in a Residential R-1 zoning district where only single unit dwellings are permitted. The subject property is generally located at 307 S. 7<sup>th</sup> Street and zoned Residential R-1.

*Petitioner Presentation*

Steffen Schrock, 61886 Amber Meadows Drive, Goshen, read a statement from Travis Peak, saying the property was purchased in spring 2005 and at that time the downstairs was a doctor's office. In fall 2005 the doctor did not renew the lease, and they tried to rent to a business for a year and then in September 2006 they rented the downstairs as a residential unit. He said the properties on either side are rentals, and this property has off-street parking to the rear along the alley.

*Audience Comments*

Phoebe Beachy, 520 E Washington, said as part of East Lincoln neighborhood, they have been working to get R-1 zoning in place, and as more people are allowed multi units, this puts more pressure on the adjacent blocks, and at some point we have to say it's enough.

Julia Gautsche, 601 S 7th Street, said she supports the neighborhood. This neighborhood needs help. There are lots of rentals and multi-units which contribute to issues like trash and parking. Keeping this single family would help the neighborhood.

Mike Hemminger, 310 S 6th Street, said a few years ago the neighborhood went together to get the R-1 zoning in

place to prevent further conversions to multi units. He asked the board to please respect the R-1 zoning.

Mr. Schrock said he did research on this property at the library using the Polk Directory, and going back to 1950 this was a doctor's office with a residence upstairs. He said since 1990 it has been on-again, off-again as a multi use and has had history as a multi use property.

*Staff Report & Discussion*

Mr. Hauflaire said staff supports the two units. In this block approximately half of the block is multi-units. He said in 1963 the BZA granted this property a variance for the outside stairwell for the apartment upstairs. He said it has been mixed use for a number of years. There is hard surface parking at the rear. The Plan Commission and Council did rezone this neighborhood to R-1.

Ms. McKenna asked what the zoning was in 1963 when the stairwell variance was granted, and Mr. Hauflaire said it was higher density residential. He said the variance request was for a side yard setback and not for use. Ms. McKenna asked when the rezoning took place, and Mr. Hauflaire said eight to ten years ago.

Mr. Friesen asked how the multi use was there, and Mr. Hauflaire said the doctor's office and apartment was a lawful, non-conforming use. He said, however, you can't switch one lawful, non-conforming use for another non-conforming use.

Ms. Fairfield asked how many bedrooms are in the house and how many kitchens. Mr. Schrock said there is a kitchen for upstairs and a kitchen for downstairs. He said there are three bedrooms upstairs and the downstairs could have five bedrooms. He said this came to the BZA because of a rental inspection. Mr. Hauflaire explained that the Zoning Ordinance defines a family as no more than two unrelated people, so even with five bedrooms we wouldn't expect to see five unrelated people living there.

*Public hearing was closed.*

*Action*

Ms. Fairfield said several years ago the BZA had a similar case with a large house in this area and the Board stuck to the R-1. She said she would need to see a reason for it to be two units. She said this is a very dense neighborhood and we have to be concerned about the value of single-family houses in the neighborhood.

Mr. Rounds said this has always been a mixed use. Ms. Fairfield said in 1963 this area wasn't as densely populated. Ms. McKenna said it seems the residents who spoke about the R-1 thought this would prevent more multi units. Ms. Fairfield said she will vote against this.

A motion was made and seconded, Fairfield/McKenna, to deny the staff analysis and recommendations and based on testimony and discussion deny petition 08-01UV. The motion passed, 3-1, on a roll call vote, with Rounds voting no.

**08-02UV & 08-02DV** – Goshen Community Schools & Odle, McGuire, Shook Corp. request a use variance to permit a parking lot on a lot that is currently zoned both Residential R-1 and Commercial B-1 where parking lots are not permitted in such zoning districts. In addition, they are requesting developmental variances to permit a 20' parking setback along Lincolnway East where 35' is required, a 12' parking setback along Reynolds Street where 30' is required and to within 12' of the west lot line where 50' is required when adjacent to residential use or district on a gravel-grass surface. The subject property is generally located at 627 Lincolnway East and zoned Residential R-1 and Commercial B-1.

There was no one present on behalf of the petitioner, so this item was skipped.

**08-03UV & 08-03DV** – Gerardo Sapien requests a use variance to permit a church as a conditional use where the conditional use requirements are not met, to permit six (6) on-site parking spaces where

thirty-five (35) spaces are required, to permit the church to be located on two (2) residential streets where the conditional use requires that it have direct access to and from an arterial or collector street, and to permit a setback of less than 50' from an adjacent residential property. The subject property is generally located at 211 E. Washington Street and zoned Residential R-1.

#### *Petitioner Presentation*

Gerardo Sapien, 1605 William Henry Lane, pastor of the church, said he needs to ask permission for the church so he can go back to the bank to purchase the property. He said this was previously a church. He said the capacity of the building is approximately 250 and they would need to build a new church if they reach this level. He said they have services Tuesday at 7:00 pm, Thursday at 7:00 pm, Friday at 7:00 pm, Sunday at 11:00 am, and Saturday for special events. He said these are hours when the city parking lots are not heavily used. He said they believe the church would support downtown businesses. He said there are 11 spaces for cars on the property now.

#### *Audience Comments*

Carlos (LNU), 2109 Cambridge Drive, Goshen, spoke in favor of the petition. He said this was a church, then a theater, now a house, and they would like to have the church back.

Judy Miller, 125 S 6th Street (same as 211 E Washington), said she thinks it is to their advantage (as property owners) to have the variance so it could be a church or a home.

Phoebe Beachy, 520 E Washington, said if there is on-street parking it will be congested, and she asked if there is anything that can be done to make sure they use the parking lots.

Gerardo Sapien, Jr, 1605 William Henry Lane, said he is music director for the church. He said they evangelize and see lives changed and they believe the church will be a benefit to the community.

#### *Staff Report & Discussion*

Mr. Hauflaire said staff supports the variance and the issue comes down to parking. He said the applicant has indicated 250 to 270 members, and staff has put a cap on the number of members at 99, which would by Ordinance require 33 parking spaces. Mr. Hauflaire also recommended a condition of no more than 12 special events per calendar year. Another church at this location would be subject to the same conditions. Mr. Hauflaire said he has no objection to a home/office or a church/office. He said a variance is good for six months and would come back if not exercised.

Ms. Fairfield asked what constitutes a member. Does this mean adults and children? Mr. Hauflaire said the Ordinance doesn't specify. Mr. Kolbus said it means both unless the Board specifies otherwise because we're looking at seats. Ms. McKenna suggested saying people rather than members.

*Public hearing was closed.*

#### *Action*

Ms. Fairfield asked whether hours should be added for Saturday. Ms. McKenna said this might be kind of restrictive, but it could say events lasting no later than 10 pm.

Mr. Rounds asked if the Board can specify what parking they use, and Mr. Kolbus said yes. Mr. Rounds said all 255 municipal parking spaces will not be available since there are also other churches downtown. He said it is important to look at the number of people. Mr. Hauflaire said that for Communion Fellowship he thinks the Board said use their parking first, municipal parking second, and neighborhood parking third. He said we can't exclude neighborhood parking, but it can be the last priority.

Mr. Friesen said he thinks this is being too picky because parking wasn't an issue when the theater was there.

A motion was made and seconded, McKenna/Fairfield, to adopt the staff analysis and recommendations as the findings and conclusions of the Board, and based on these findings and conclusions to approve petition 08-03UV

& 08-03DV with the conditions listed in the staff report, plus the addition of a sixth condition that on-street parking be used as a last resort, with on-site parking used first and municipal parking used second. The motion passed unanimously, 4-0.

**08-02UV & 08-02DV** – Goshen Community Schools & Odle, McGuire, Shook Corp. request a use variance to permit a parking lot on a lot that is currently zoned both Residential R-1 and Commercial B-1 where parking lots are not permitted in such zoning districts. In addition, they are requesting developmental variances to permit a 20' parking setback along Lincolnway East where 35' is required, a 12' parking setback along Reynolds Street where 30' is required and to within 12' of the west lot line where 50' is required when adjacent to residential use or district on a gravel-grass surface. The subject property is generally located at 627 Lincolnway East and zoned Residential R-1 and Commercial B-1.

*Petitioner Presentation*

Bruce Stahly, 1714 Bainbridge Place, on behalf of Goshen Schools, said they are asking for a variance where the old grocery store was located at US 33 and Reynolds. He said originally they thought they would put in pervious pavement, but because this seems too costly they are now looking at grass only. He said they would use it for parking for some football games. He said they will do the landscaping, fence and sidewalk.

Mr. Friesen asked if students will use this, and Mr. Stahly said no, only for football and some relays. He said they want limited access and parking will only be allowed when it's dry.

Ms. McKenna asked if it will be completely fenced, and Mr. Stahly said yes, with either bollards or split rail.

Mr. Hauflaire asked if there will be light fixtures, and Mr. Stahly said no.

Mr. Rounds said he sees students walking along the fence line, and he asked if there will be an opening in the fence for them to get through, and Mr. Stahly said yes, plus the fence will be far enough away from US 33 to have a walking path.

*Audience Comments* - There was no one to speak to the petition.

*Staff Report & Discussion*

Mr. Hauflaire said staff supports the variance with the listed conditions, and if they want to put hard surface they would come back to a public hearing. He said #4 could be removed since there will be no lighting.

*Action*

Mr. Friesen said he is a little torn about not having a sidewalk on 33. Mr. Hauflaire said this is because of the potential improvements along US 33 that would then require the sidewalk to be removed. Mr. Rounds said there are no other sidewalks on either side of US 33 in this area. Mr. Rounds asked if there should be a trigger for condition #2 if the use increases. Mr. Rounds suggested adding a sixth condition that this will not serve the daily parking for the school, but for football and special events as needed and the area will remain grass.

A motion was made and seconded, Rounds/McKenna, to adopt the staff analysis and recommendations as the findings and conclusions of the Board, and based on these findings and conclusions to approve petition 08-02UV & 08-02DV with the conditions listed in the staff report, plus the addition of a sixth condition that the parking area will not serve the daily parking demands of the school, but will receive limited use for football games and other special events. The motion passed unanimously, 4-0.

**08-04UV** Joel Corbin requests a use variance to permit the grazing of a limited number of chickens in the rear portion of the property with less than the required 500' separation from adjacent residential use or zoning. The subject property is generally located at 1823 Bashor Road and zoned Residential R-1.

*Petitioner Presentation*

Joel Corbin, 1823 Bashor Road, said he is the newest member of the neighborhood and he met some of his neighbors and there were three main questions. First was what about smell? He said this will be addressed by rotational grazing using a transportable shelter. The second question was what about noise, and he said this will be addressed by eliminating roosters. He said the breed he has is also a gentle bird. He said the third question was what about eggs, can I have some, and he said they won't be laying until Easter.

*Audience Comments*

Robert Clark, 1819 Bashor Road, said their concerns are the same brought up by Joel. He said they don't understand the necessity of this in the City with plenty of farmland available. He said his wife has a fear of birds in general.

Rudy Schirr, 1827 Bashor Road, said he has a lab retriever trained for birds and she will bark and bark at the chickens and if she gets out he knows where she will go. He asked the number of chickens, and Mr. Friesen said 25. Mr. Schirr said he has a friend with about eight chickens, and they aren't moved, but they do stink. He said he works three different shifts and sleeps lots of different hours, so noise is a concern. He said Joel's property isn't fenced in. He said he bought in Goshen in this area because it is like living in the country with City benefits. He said they have a concern with what this would do to property values and they have a busy road in front.

Kyle Priem, 902 Lynwood, said he would like to express the same objections. He said he also has a dog. He said he moved to Goshen for a reason, including the City restrictions. He said as a police officer he knows from going out on calls that this can become a big nuisance.

Kent Nusbaum, 1825 Bashor, said he is an adjacent property owner and he concurs with the concerns addressed. He said if he saw chickens next door he would not have bought this property. He said 25 is a lot higher number than he was led to believe. He asked the Board what this opens the door for if this is passed. He asked what they do if by July it stinks. He said they also have a dog, and what is the liability if his chicken gets on my property. He said he would look for a property in the country himself if he wanted to do something like this.

Carolyn Partlow, 1826 Bashor, said she has lived there for 35 years and there is lots of traffic and noise and dogs haven't survived well at this location because of the traffic. She said they will get out even when you try to keep them in, and this is a country issue.

Sheri Batten, 1825 Bashor Road, said if this variance passes and their property values decrease will their property taxes also be lowered. She asked the Board if they would want chickens next to them.

*Staff Report & Discussion*

Mr. Hauflaire said the Planning Office received five or six phone calls in opposition. He said the site is about 700' deep and it is a narrow property. He said the property to the east is zoned industrial. He said the birds will be housed in a 4' by 8' shelter that is movable with a grazing area 10' by 20' that is movable. Mr. Hauflaire said he would recommend approving with conditions, and allow for three years and then they would have to go back through the public hearing process.

Ms. Fairfield asked why they have chickens, and Mr. Corbin said it started as a science experiment and now they are pets.

Ms. McKenna asked if this is a one-time thing or will they get more chickens, and Mr. Corbin said three years is the average length of time they lay eggs, which is where the three years comes from. Ms. McKenna asked how many chickens he has now, and Mr. Corbin said 25.

Mr. Schirr said Mr. Corbin's woods is not cleared out, so he won't be able to move them around very far, and he questioned whether the adjacent zoning to the east is industrial. Mr. Hauflaire said Mr. Corbin's property does not abut industrial zoning. Mr. Hauflaire said the Board can move the number of chickens.

Mr. Rounds said he doesn't think this is appropriate, but he has more conditions if the Board wants to consider approval. He said just because the property is the size it is doesn't mean we should consider this.

*Public hearing was closed.*

*Action*

Mr. Friesen asked how many letters were sent out, and Mr. Hauflaire said 25.

Ms. McKenna said she would also have more conditions, such as one year and requiring a privacy fence, but 25 is a lot.

Mr. Friesen said he can't vote for this. He said out of 25 letters we have 12 responses not in favor.

Ms. Fairfield said kids can have other pets, and she can't vote for this. She said she always has to think if she would want to live next to this.

A motion was made and seconded, Rounds/Fairfield, to deny the staff analysis and recommendations and based on testimony and discussion deny petition 08-04UV. The motion passed unanimously, 4-0.

VIII. Developmental Variances

- 08-01DV** Jerry Erschen requests a variance to permit a shared access drive with 0' setback between lots 1 and 2 of the TIGR addition where 5' would be required from the common lot line. The subject property is generally located in the 2100 block of W. Wilden Avenue and zoned Industrial M-1.

*Petitioner Presentation*

Jerry Erschen, 59281 Old CR 17, said he recently purchased this property and is trying to put together a cost effective plan. He said they want to share one driveway between two lots, with one entrance and exit on Wilden.

*Audience Comments*

Steve Fortier, 2137 Wilden Avenue, said he has the commercial property on the corner of Wilden and Hemlock. He asked to see where the drive is located, and was shown the site plan. He said he doesn't have a problem with this. He said his building was required to be set back because of the bike path and he wants to see the same responsibilities here.

*Staff Report & Discussion*

Mr. Hauflaire said the application is straightforward, and the question is one driveway or two driveways. He said everyone has the right to access. He said having one access is preferable, and the building setback isn't an issue here. He said with approval a copy of the recorded plat will be required to be submitted to the Planning Office.

*Public hearing was closed.*

*Action*

Mr. Rounds asked where on the site plan is the building setback, and Mr. Hauflaire said it would be 75' from the center of the road. Mr. Rounds said he likes the idea of one less curb cut.

A motion was made and seconded, McKenna/Rounds, to adopt the staff analysis and recommendations as the findings and conclusions of the Board, and based on these findings and conclusions to approve petition 08-01DV with the conditions listed in the staff report. The motion passed unanimously, 4-0.

IX. Audience Items: none

X. Staff/Board Items: Mr. Rounds asked Mr. Hauflaire to look at the car lot on 33 across from Key Bank and

the number of vehicles they have, which is supposed to be at 30, but looks like it could be more.

XI. Adjournment: 5:50 pm

Respectfully Submitted:

---

Rhonda Yoder, Recording Secretary

Approved By:

---

Ardean Friesen, Chair

---

Karen Fairfield, Secretary