

Minutes - Goshen Board of Zoning Appeals  
Tuesday, September 23, 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: Ardean Friesen, Karen Fairfield, Angela McKenna, Kelly Huffman, and Tom Holtzinger. Also present was City Planner Joe Hauflaire and Attorney Don Shuler.
- II. Approval of Minutes from 8/26/08: Holtzinger/Huffman, 5-0.
- III. The Zoning/Subdivision Ordinances & official Staff Reports were unanimously filed into Record: McKenna/Fairfield, 5-0.
- IV. Postponements/Withdrawals: none
- V. Variances – public hearing items  
**08-38DV** Christine Adam requests a developmental variance to permit a freestanding sign 60 square feet in area and 18 feet in height, where 50 sq ft in area and 15 feet in height are permitted. The petitioner is also requesting a multi-color electronic message center sign. The subject property is generally located at 822 Lincolnway East and zoned Commercial B-3.

*Petitioner Presentation*

Christine Adam, 58265 CR 27, Goshen, and Richard Swift, with International Dairy Queen, 16339 Baywood Lane, Granger, introduced themselves. Ms. Adam said she doesn't want the electronic reader board and is hoping to get a larger sign, around 85 sq ft in area. Mr. Swift said the profile of the sign is a logo at the top, 33.1 sq ft, the Grill & Chill bowtie in the middle, 29 sq ft, and a standard reader board at the bottom, 25 sq ft in area, for a total of 87 square feet. He said they are also removing wall signs.

Mr. Friesen asked if that means there would be no wall signs, and Mr. Swift said there would be one wall sign on the chimney.

Mr. Hauflaire said these dimensions are different than what was in the application, which was 27 sq ft on the top, 7 sq ft in the middle, and 25 sq ft at the bottom. Ms. Yoder said the Board cannot discuss something bigger than 60 sq ft, which is what was advertised.

Mr. Swift said overall there is a 20 percent reduction. Mr. Hauflaire said the Board can't consider a request higher than what was advertised. Mr. Swift said the signs will be up ten years, so waiting a month is okay. Mr. Friesen suggested it might be best to withdraw and resubmit. Ms. Adam said that is fine.

A motion was made and seconded, Huffman/Holtzinger, that petition 08-38DV be withdrawn without prejudice per the request of the petitioner.

Allan Kauffman (Mayor) said as a point of order that he thinks the Board could act on this and then they can submit something different.

The motion was withdrawn, Huffman/Holtzinger. There was a long discussion on the options for withdrawing, rehearing, resubmitting. Mayor Kauffman asked if they could table and also submit a new request. Ms. Huffman outlined the options as withdrawing & resubmitting, tabling & submitting a new petition, and hearing the petition and if it is denied having faith that the vote would be unanimous to rehear a new petition.

Mr. Shuler recommended tabling the current petition and submitting a new request and then both will be on next month's agenda.

A motion was made and seconded, Huffman/Holtzinger, to table petition 08-38DV per the petitioner's request. The motion passed unanimously, 5-0.

**08-39DV** The Depot requests a developmental variance to permit a freestanding sign 80 square feet in area and 17' in height where a freestanding sign 36 square feet in area and 4 feet in height was approved as part of a use variance granted in 1993. The subject property is generally located at 1013 Division Street and zoned Industrial M-1.

*Petitioner Presentation*

Cecil Tucker, 20 The Willows, representing The Depot, said their initial intent was to replace the sign that was built in 1993 and needs to be replaced. He said the thought was to put the sign in the middle of the parking lot with The Depot at the top and space for tenant signs. He asked whether another possibility would be to raise the existing sign to 10 feet and add some room for tenant information.

Mr. Friesen asked if the intent was always to have the new sign in the middle of the parking lot, and Mr. Tucker said yes.

Ms. Huffman asked if The Depot has changed to have tenants now when they didn't have tenants when the initial use variance was approved, and Mr. Tucker said current tenants are MCC, Max, Michiana Oak, thrift shops, meat canning and Project Promise. He said they do have wall signs on the building for these tenants.

Ms. Huffman asked if they would remove the wall signs if that were a condition of approval, and Mr. Tucker said yes.

Mr. Hauflaire said they have the right to put up a directory sign. He said he thinks The Depot is a destination and not something you drive around looking for. He said they also have a sign on Indiana Avenue and they also have an off premise sign on US 33. Mr. Hauflaire asked the Board to remember that this is across the street from a residential neighborhood and the whole use is there by a variance.

Ms. Huffman asked what sign would have been permitted before the ordinance change, and Mr. Hauflaire said no sign is permitted except through the use variance.

Ms. Fairfield asked how old the houses are in the neighborhood, and Mr. Tucker said the factory is older than the houses.

Ms. McKenna asked how large The Depot portion is, and Mr. Tucker said about 4 feet by 9 feet. He said they were looking to go higher to be seen over the cars. He said each panel is about 1 foot by 30 inches. The bottom of the sign would be above ground seven feet.

Ms. Huffman asked about six panels instead of eight, and Mr. Tucker said that would be okay.

Mr. Friesen said his suggestion is 8 feet by 8 feet, seven feet off the ground, non-lit, in the parking lot.

Ms. McKenna asked what would happen to the existing sign if this is granted, and Mr. Tucker said it would be taken down. Mr. Tucker said the signs on the building are each 30 inches by 15 inches.

*Audience Comments*

There was no one to speak to the petition.

*Staff Report & Discussion*

Mr. Hauflaire recommended the request be denied. He said no sign is permitted by right. He said he has no objection to a sign 8 feet in height and they have the right to put a directory sign in the parking lot.

Mr. Friesen said his suggestion is to allow in the parking lot, unlit, 8 feet by 8 feet, removing the wall signs on the building and the existing sign near the church, and a maximum height of 15 feet. He asked Mr. Tucker is he is

agreeable to the reduced size, and Mr. Tucker said yes. He said the wall signs he would take down are by the front door, because there are other new wall signs on another portion of the building.

*The public hearing was closed.*

*Action*

A motion was made and seconded, Huffman/Holtzinger, in the matter of 08-39DV to allow a variance to permit a sign no larger than 8 feet by 8 feet, no higher than 15 feet, taking down the sign by the church and the directional signs on the wall, unlit, and the location as marked on the parking lot. The motion passed unanimously, 5-0.

**08-40DV** Michael A. Landis requests a developmental variance to permit a freestanding sign 60 square feet in area where 50 sq ft in area is permitted. The petitioner is also requesting a multi-color electronic message center sign. The subject property is generally located at 723 W. Pike Street and zoned Commercial B-3.

*Petitioner Presentation*

Mike Landis, 1102 Prairie Avenue, handed out color copies of the proposed sign. He said the sign would be placed on the existing pad about 10 feet off the right of way, and 6 feet from the right of way with the furthest projection. He said the current sign is 30 feet high and he can live with 15 feet. The size he is requesting is just under 60 sq ft.

Mr. Friesen asked if the electronic sign will be flashing, and Mr. Landis said it would be static, and that is fine. He asked whether each sign can be adjusted to stay within the 60 sq ft if he decides not to go with the electronic message center once the request is granted. He asked whether changeable copy would be allowed in place of the electronic message center.

Mr. Hauflaire said the kind of reader board probably doesn't matter; the proportions are the issue.

*Audience Comments*

Darryl Riegsecker, 704 Reliance Road, said he hopes the Board approves this request. He said he wants to make a point that staff is recommending approval for a new sign, but isn't approving face changes, and face changes would be cheaper than a new sign.

Mr. Hauflaire asked if he had any specific cases in mind, and Mr. Riegsecker said Northern Pride.

*Staff Report & Discussion*

Mr. Hauflaire recommended approval. He said the sign is half of what was there. The sign height is permitted and the sign area is within the limits of the ordinance. The issue is lack of frontage.

Ms. Huffman said she believes that Mr. Hauflaire recommends approval when the height requirement is met and the area is within ten percent. Mr. Hauflaire said as a general statement he would agree.

*The public hearing was closed.*

*Discussion & Action*

Ms. McKenna said she thinks color electronic message signs are distracting. Ms. Huffman said she thinks there is a difference when it's not moving. Mr. Friesen said that is why he asked, because if it is a concern it needs to be specified.

*The public hearing was reopened.*

Mr. Landis said he now has to climb a ladder to change the letters and with this he can change it twice a day with a computer. He said it is not his intent to use it for flashing messages, but it switches from one picture to another.

Ms. McKenna asked if there will be pictures and text, and Mr. Landis said yes, a picture with a message.

*The public hearing was closed.*

A motion was made and seconded, Huffman/Holtzinger, in the matter of 08-40DV to concur with staff findings and recommendations and approve with conditions A through J of the Conditional Use section, Electronic Message Centers (listed below) to apply if not in conflict with this decision (i.e., Condition I related to color does not apply). The motion passed unanimously, 5-0.

**08-21UV** David & Elizabeth Myers request a use variance to permit a real estate and retail sales office in a residential zoning district, and to allow a freestanding sign 64 sq ft in area and 17' high, where 50 sq ft in area and 15' high would be permitted in a commercial zoning district. The subject property is generally located at 2809 Ferndale Road and zoned Residential R-1.

*Petitioner Presentation*

David Myers, 23929 US 33 East, Elkhart, said he doesn't understand the recommended conditions. He said he is currently in a 1400 sq ft building and he can't live with the restrictions on hours and number of employees. He said he is in the office quite often in the evenings. He said he has gone to IHOP, Briggs (behind the subject property), Petco, and Betsy Moore, and no one objects, except Betsy Moore has a concern about the placement of the sign and wants it located on the north side of the driveway. He said he is requesting a use variance rather than a rezoning because a rezoning should probably include the whole corner and until the whole corner can be part of the rezoning it would be detrimental to the other property owners.

Mr. Friesen asked about the number of vehicles expected and where they would park. Mr. Myers said he could expand the parking. He said he can't use the property if it is limited to five people. He said regarding the retail sales he uses a phone, fax and computer and would not have a sign for this. He sells tornado shelters, hydrogen generators and odor absorbers, and has a few customers coming on site to pick up the odor absorbers which are the size of a cottage cheese container.

Mr. Friesen said restrictions are usually made for full-time employees and he asked how many agents Mr. Myers has, and Mr. Myers replied that he has 22 agents. He said when he has a training they need to be able to have more than five people there. If said if the code is 100 sq ft per person he doesn't see why the number would be restricted.

Ms. McKenna said parking may be part of the limitation. Mr. Hauflaire said this is correct. He said the incidental use of the property for training was not what he was getting at.

Mr. Myers said regarding the sign that this is the sign he has, and he was hoping to move it.

*Audience Comments*

Sherry Sayles, 26018 Redfield Road, Edwardsburg, Michigan, said she previously lived at 2809 Ferndale Road and the house is for sale. She said when she had the property they had six or eight cars in the driveway. She said this is not adjacent to any property for which the proposed use is a nuisance. She said on occasions she had as many as 12-15 cars and they would overflow on the grassy area.

Mr. Friesen asked Ms. Sayles what her hours were, and she said 11 am to 8 pm, plus occasional Saturday workshops.

Tom Stump, 823 S 7th Street, Goshen, said he owned this property for a number of years and it is in the heart of a commercial area. He said he is surprised it is zoned R-1. He urged the BZA to approve the sign, and said parking could be handled with some improvements.

Betsy Moore, said she has the property next door. She said she doesn't have concerns, except that the sign be located on the north side of the driveway. She said she has a variance now and it is only for her or whoever lives with her, and she asked if she could increase this by one or two if this proposed variance is approved.

Mr. Hauflaire said a public hearing would be required to increase the number of people for her variance.

Mr. Friesen asked about her hours, and Ms. Moore said they are by appointment, but never past 8 pm. Mr. Friesen asked if she lives on the premises, and Ms. Moore said yes.

*Staff Report & Discussion*

Mr. Hauflaire said he has a copy of the variance for 2809 Ferndale that was approved by the County and it requires the applicant to reside on the property, hours of 12 pm to 8 pm, Monday through Friday and 10 am to 4 pm on Saturday, unlit sign no larger than four sq ft in area, no outside employees, and the residential use to remain the primary use of the property.

Mr. Hauflaire said the area has changed substantially, but there is residential use in the area. He said the applicant is requesting three uses, real estate office, American Adventures, and a business operated by his son and several others. He said when the Board approves a use variance we like to have a good idea of what is involved, and he said he thinks some of the request is vague. He said on-site parking is limited. He said the sign works well in Dunlap, but wouldn't work well in front of a house. He said he has recommended eliminating two uses in favor of the real estate use only. Mr. Hauflaire said he recommends a monument sign 32 sq ft in area and 8 feet in height. Mr. Hauflaire said there are seven conditions suggested as part of the approval.

Mr. Holtzinger asked if the limit on the number of employees is because of the concern for parking, and Mr. Hauflaire said yes.

Ms. Huffman said Mr. Myers has said he has 22 independent contractors, so the condition should read no more than five employees/independent contractors.

Mr. Friesen asked Mr. Myers how many full-time employees he has, and how many people would be coming and going. Mr. Myers said he has four full-time employees in the office plus the agents coming and going. He said two to four times per month he has office meetings when everyone is there, and this would be 15-22 people. He said he also wants to be able to grow. He said he will not buy the property if the agents cannot be there. He stated again that American Adventure is primarily phone and computer.

Ms. Huffman said we need to let him expand parking.

Mr. Hauflaire said we as a Board need to manage this property and we don't have a good understanding of what is being requested. For example, what does additional product possibilities mean.

Mr. Myers said additional products means he wants his business to grow.

Darryl Riegsecker, 704 Reliance Road, Goshen, said several months ago a banquet facility was discussed and a comment was made to allow overflow parking on the grass, so he doesn't know why the Board would now say overflow parking should not be allowed on the grass. He said it is more residential in the Lincoln Avenue area where the banquet facility is located. He said Mr. Myers is asking for an honest request and the Board should approve the request.

Ms. McKenna said that regarding the banquet facility, the parking was reduced so they would not be parking on the grass.

Mr. Friesen said his concern was the sign and it should be kept in character with signs in the area.

Ms. McKenna asked whether more parking was not already needed. Ms. Fairfield said we haven't even talked about customers coming to the site. Ms. McKenna said she would feel better if he had a parking plan.

Sherry Sayles said the driveway is three bay and you can turn around without backing onto Ferndale. She said there is a three-bay garage there too.

Ms. Huffman said she also wants a plan for parking. Mr. Myers said he has no problem trying to make adequate

parking. Ms. Huffman asked why condition #3 should be there, and Mr. Hauflaire said because without that we lose management of the property. He said it raises the question of whether we design the use based on the number of parking spaces or do we do it the other way around. Mr. Holtzinger asked whether the petitioner should be asked to come back with a better parking plan. Ms. McKenna suggested changing condition #3 to no increase in parking area without approval from the BZA. Mr. Hauflaire asked whether that approval would be discretionary or if it would be approved if it meets the developmental standards.

Ms. Huffman said with all that we've heard it seems more appropriate to rezone. Mr. Hauflaire said with a PUD we would be having the same discussion. Ms. Huffman said the use variance should be for a single business, and more businesses is a concern. Mr. Friesen suggested working on the conditions, and he suggested hours of 8 am to 8 pm. Ms. Huffman suggested that the sign location on the north side of the drive be added to the conditions. Mr. Friesen suggested no more than five to eight employees and that condition #3 be no parking changes without approval by Planning & Engineering. Mr. Friesen asked whether the business should be allowed if it is limited to phone, fax and computer. Ms. Huffman said the retail business needs to be restricted to phone, fax and computer and no sign.

Mr. Myers said that to save the Board some time if it is limited to eight he is not interested.

*The public hearing was closed.*

#### *Action*

A motion was made and seconded, McKenna/Fairfield, for petition 08-21UV to follow staff recommendations to deny the retail sales use, deny the freestanding sign request, but to approve the part of the use variance for a real estate office, with seven conditions, as follows:

1. For professional office for a real estate office only.
2. The requirement to connect to city water and sewer will be waived for this use variance only.
3. No increase in area of the existing driveway and parking area is permitted with this approval.
4. No exterior improvements or building additions are permitted.
5. No more than eight employees/independent contractors at any one time may be at the site.
6. One monument sign will be permitted no greater in area than 32 sq ft and no greater in height than eight (8) feet. The monument sign shall be located on the north side of the existing driveway. No additional signs are permitted.
7. Permitted hours are Monday through Saturday from 8:00 am to 8:00 pm. After-hour business may occur from time to time, but shall be infrequent and occasional.

The motion passed unanimously, 5-0.

**08-22UV** Bruce Grover requests a use variance to permit a business selling and servicing scooters, ATVs, go carts and off-road motorcycles in an industrial zoning district, where the primary use of the property is residential. The subject property is generally located at 2401 E. Kercher Road and zoned Industrial M-1.

#### *Petitioner Presentation*

Bruce Grover, 2401 E Kercher, introduced his son, Rick Grover, 574 Broadmore. Bruce said he purchased this property in 1990 and there was nothing around it at the time, but now it's totally built up. He said he is an inspector for manufactured housing and his son works in the RV business, and both are going down.

Mr. Friesen asked if he is familiar with staff recommendations, and Bruce said yes, the only problem is with banners and temporary signs, which they need for sales.

Rick Grover said he can do without banners but needs the 2' x 2' signs occasionally. Bruce said the best way to advertise sales is with a temporary sign.

Mr. Hauflaire said the Zoning Ordinance allows a temporary sign for a maximum of 60 days in a twelve month period, and only one temporary sign is allowed. Ms. Huffman asked if a permit is needed for a temporary sign, and Mr.

Hauflaire said yes. He said when the permit is purchased they then call in with the days they use the temporary sign and the Planning office keeps track.

Mr. Hauflaire said regarding utility extension, condition #10, they are aware of this and are working through this with Engineering.

*Audience Comments*

There was no one to speak to the petition.

Mr. Friesen asked Bruce Grover if he is okay with all the recommendations and Mr. Grover said yes.

*The public hearing was closed.*

*Action*

A motion was made and seconded, Huffman/Holtzinger, for 08-22UV to concur with staff's findings and conclusions and to grant the petition with the 11 conditions listed in the Staff Report, and changing condition #5 to read, "one freestanding sign no greater than 32 square feet in area and eight feet high will be permitted. No other signs will be allowed, except one wall sign facing Kercher, meeting the requirements of the Goshen Zoning Ordinance, and one temporary sign, meeting the requirements of the Goshen Zoning Ordinance."

Bruce said they have signs on the sides of the barn now, over the overhead doors, and he asked if they have to come down. Mr. Hauflaire asked how large they are, and Rick said they are 4 feet by 8 feet. Mr. Hauflaire said the freestanding sign should be adequate. Mr. Friesen suggested the petitioner should work with staff on a permitted wall sign.

The motion passed unanimously, 5-0.

VI. Audience Items - none

VII. Staff/Board Items

*08-15UV, 324 Middlebury Street, request to revise business hours for use variance granted May 27, 2008*

Mr. Hauflaire said this request is to shift the hours to 7 am to 11 am until they are out of the current lease they have for the property located at Pike and Chicago, and then to go back to the approved hours. A motion was made and seconded, Huffman/Holtzinger, to approve the revision in business hours to 7 am to 11 am for as long as the current lease agreement is in effect for the Chicago-Pike property, and then to return to the hours approved as part of the use variance granted May 27, 2008. The motion passed unanimously, 5-0.

VIII. Adjournment: 6:18 pm

Respectfully Submitted:

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Rhonda Yoder, Acting Recording Secretary

Approved By:

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Ardean Friesen, Chair

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Karen Fairfield, Secretary