

Minutes - Goshen Board of Zoning Appeals
Tuesday, October 27, 2009 - 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, Tom Holtzinger, Karen Fairfield and Don Riegsecker. Also present was City Planner Joe Hauflaire and Assistant City Attorney Don Shuler.

II. Approval of Minutes from 9/22/09: It was noted that the minutes were not available from the September meeting and that they would be provided in the November packets for review.

III. The Zoning/Subdivision Ordinances and Staff Reports were unanimously filed into Record: Holtzinger/Riegsecker, 4-0.

IV. Postponements/Withdrawals: None

Kelly Huffman joined the meeting at 4:05 p.m.

V. Variances

09-31DV – Trang Nguyen Hicks & Karl Schrock request a developmental variance to permit a front yard setback of 7' along Middlebury Street where 35' is required to allow the construction of a detached accessory structure. The subject property is generally located at 324 Middlebury Street and zoned Residential R-2.

Mr. Hauflaire noted the previous request for this property made by the petitioners regarding their massage and nail salon in the home and that they are now asking for a car port. He explained that, by definition, carports are to be unenclosed on three (3) sides. He advised that Staff has no objection to the relaxed setback and that there are many similar setbacks in this area. He also noted that the carport will sit back further than the existing home. He read the two (2) conditions listed in the Staff Report including that it will be required to remain a carport and that it be architecturally harmonious with the house. He noted that a metal prefabricated building should not be permitted and that he would like final review of the plans prior to signing a zoning clearance.

Petitioner Presentation

David Hostetler, 65775 CR 43, Milford, spoke on behalf of the petition. He provided photos to the Board showing what currently exists at the site and advised that they are planning for a wood structure with a 4/12 pitch on the roof. He also stated that they will try to match the siding and colors of the home.

Mr. Friesen asked if it will have a flat or gable style roof. Mr. Hostetler explained that it will have a gable in the front.

Mr. Hauflaire requested confirmation that it will be a detached structure. Mr. Hostetler stated that it will sit close to the home but that it will be detached.

Mr. Friesen asked what the measurements will be. Mr. Hostetler advised that it will be 20'x18' and that they will stay as far back on the existing concrete pad as possible.

Mr. Riegsecker asked if it will be open on all four (4) sides. Mr. Hostetler confirmed that it will.

Audience Comments

There was no one to speak to the petition.

Public hearing was closed.

Staff Report & Discussion

Mr. Friesen recommended a third condition requiring that the final design be approved by Staff.

Action

A motion was made and seconded, Riegsecker/Holtzinger, to approve 09-31DV with the two conditions listed in the Staff Report and third condition added today to read as follows:

3. *The final exterior design shall be approved by the Zoning Administrator prior to a zoning clearance being signed.*

The motion passed, 5-0.

09-32DV – Southside Self Storage & Adlai Schrock requests developmental variances to permit partial landscaping for an industrial use adjacent to a residential zoning district where full landscaping is required and for the variance to be granted for a period of one year. The subject property is generally located at 811 E. Kercher Road and zoned Industrial M-1.

Mr. Hauflaire noted the letter of remonstrance that was received and that was provided to the Board for review. He advised that this case first appeared before the Board in August 2008 and that the request was granted at that time to allow partial landscaping instead of full landscaping for this project. He noted that this use is permitted in Industrial M-1 and M-2 districts and also in Commercial B-3 districts and that if this were zoned B-3, only what is being proposed by the petitioner would be required. He further added that the more stringent requirement is only necessary because of the Industrial M-1 zoning of this property. He asked that the Board approve the petition as submitted with the five (5) conditions listed in the Staff Report.

Mr. Friesen noted the change to Condition #3 to read “Staff”.

In response to the letter in opposition to the request, Ms. Huffman noted that they previously approved outside storage as long as it was hidden from the road. Mr. Hauflaire advised that the outside storage may be visible for awhile as the project will be developed in phases but that it will eventually be hidden.

Petitioner Presentation

Adlai Schrock, 2523 Messick Drive, spoke on behalf of the petition. He provided handouts to the Board showing the planned landscaping and pointed out that there will be eighty-five feet (85') of grass and landscape in front of the buildings. He advised that he feels this will be a good use for this location as it is not greatly increasing traffic at an already bogged down stretch of road and that it is a commercial and not an industrial use. He stated that they do not want the full landscaping as they want for the project to be seen.

Mr. Friesen asked Mr. Schrock if he has reviewed the Staff recommendations and Mr. Schrock advised that he has and that he is in agreement with them.

Mr. Friesen also asked for clarification that they intend to use the same landscaping plan. Mr. Schrock stated that they are and that, because of the order in which the buildings will be constructed, the visibility of outside storage will not be an issue.

Mr. Riegsecker asked if they will be installing a false door. Mr. Schrock confirmed that they are and that it will let people know that it's a self-storage facility while still looking nice. He advised that he has viewed others like this.

Regarding the visibility from the sides, Mr. Hauflaire advised that it will not be much of an issue, especially after the adjacent lot is developed.

Audience Comments

There was no one to speak to the petition.

Public hearing was closed.

Staff Report & Discussion

Ms. Huffman stated that she feels that this is a good use for this lot.

Action

A motion was made and seconded, Huffman/Holtzinger, to approve 09-32DV with the five (5) conditions listed in the Staff Report with the minor modification to the word “Staff” in Condition #3. The motion passed, 5-0.

09-33DV – Thermal Plastic Division (Triangle Rubber) & DJ Construction Co., Inc. request developmental variances to permit a 25’ rear yard building setback where 100’ is required adjacent to residential zoning and a 25’ front parking setback where 35’ is required and to modify the full landscaping requirements. The subject property is generally located at 1801 Eisenhower Drive North and zoned Industrial M-1.

Mr. Hauflaire advised that this came before the Board in 2004 and that, at that time, Staff recommended a 40’ setback instead of 25’ because the reduced setback pushes the development close to undeveloped residential to the north. He stated that he is again recommending the 40’ setback from the rear property line for this new addition. He noted that the reduction in square footage will only be approximately 3,600 to 3,700 square feet with the increased setback, totally less than a 10% reduction as the overall project is approximately 49,000 square feet. Regardless of the setback, he advised that there should be landscaping along the rear property line. He acknowledged that there is currently a mound and evergreens but that it belongs to Greencroft and that this property has some responsibility for landscaping, as well. He stated that he would like the ability to work this detail out with the applicant.

Mr. Holtzinger questioned whether or not it will look odd to have the new portion built with a forty foot (40’) setback when the existing structure is at twenty-five foot (25’). Mr. Hauflaire stated that he doesn’t believe that it would as it is only a fifteen foot (15’) difference and that the forty foot (40’) would still be required for any parking lot improvements.

Petitioner Presentation

Pete Garber, 3414 Elkhart Road, spoke on behalf of the petition. He also advised that Ed Gerwels with Triangle Rubber was present to answer any questions. He briefly summarized their requests included in the petition and noted that he has spoken with both the Director of Maintenance and the Directors of Buildings and Grounds for Greencroft and that neither of them had any objections to the project being constructed with a twenty-five foot (25’) setback. He also pointed out that the business directly east of this property has the same reduced setback.

Mr. Friesen asked if the addition will be completely enclosed. Mr. Garber advised that it will be. He stated that the addition will be utilized by Thermal Plastics and that it will have no objectionable noises or smells. He noted that there will be no exits on the north side except for an emergency exit. He advised that there will be four (4) windows but that the building will be air conditioned and the windows will not be opened. He confirmed that Greencroft constructed a five foot (5’) mound with twenty foot (20’) evergreens several years ago and that it acts as a dominant buffer. He advised that they will install a minimal amount of additional buffer landscaping but that it will likely not serve much of a purpose.

Mr. Holtzinger asked if the easement is above or below ground. Mr. Garber advised that it is overhead.

Mr. Garber stated that they are also asking for a twenty-five foot (25’) parking setback in the front where thirty-five foot (35’) is required for parking. He advised that a similar request was approved in 2004 and that this will be a mirror image to what is in place on the other side of the drive.

Mr. Riegsecker asked if they would move the building south or make it smaller if the reduced setback is not granted. Mr. Garber stated that it would make it smaller and advised that it would be detrimental for the planned manufacturing processes. He noted that they are planning for several large presses to accommodate the new business that they have acquired.

Mr. Hauflaire asked when the “future” building addition is planned and whether or not it will be within the six (6) month window that variances are good for. Mr. Garber advised that it is part of more of a “master plan”.

Ed Gerwels, 56452 Whispering Hills Drive, Bristol, explained that they intend to hire approximately twenty (20) new people with the first phase of the project and that they have no definite plans beyond that point.

Mr. Hauflaire advised that the Board has to decide if the petitioners would have to come back for the proposed addition if and when the time comes.

Ms. Huffman suggested giving them two (2) years instead of just six (6) months.

Mr. Gerwels stated that the extended time would be great for them but that there is still no guarantee that it will happen in that time frame.

Audience Comments

There was no one to speak to the petition.

Public hearing was closed.

Staff Report & Discussion

Mr. Holtzinger advised that it would be hard to not grant the variance as requested.

Mr. Riegsecker agreed stating that there is already a twenty-five foot (25') setback in place. He also noted that Greencroft will likely not develop this close to the property line.

Mr. Holtzinger also pointed out that the easement is already in place.

Action

A motion was made and seconded, Holtzinger/Huffman, to approve 09-33DV with the following conditions:

1. *Approval shall be for site plan dated 10-6-09 prepared by DJ Construction with the requested 25' setback. The approved plan shall be for “Proposed Building Addition” and “Future Building Addition” provided a building permit is obtained for “Proposed Building Addition” within six months and a permit for “Future Building Addition” is obtained within two years of the BZA decision.*
2. *A landscape plan shall be approved by the City Planner before a building permit is issued. The plan shall provide a buffer between the building and adjacent residential property. It will not be expected to entirely hide the industrial building from the residential zone, but break up the differing land uses. The plan shall at a minimum identify the plant material, size of planting material, and mature size of the plants.*
3. *All required City Engineering approvals, including a drainage plan, shall be approved by City Engineering before a zoning clearance is signed.*

The motion passed, 5-0.

09-34DV – Dale Crist requests a developmental variance to permit a side yard setback of 2.5' where 10' is required to allow for the construction of an attached garage. The subject property is generally located at 220 The Willows and zoned Residential R-4.

Mr. Hauflaire noted the only issue with this request is that the suggested two and half foot (2.5') setback be bumped up to a minimum of three foot (3') to eliminate a lot of the Building code requirements such as firewalls. He advised that the increased setback also allows for a maintenance buffer that makes the property easier to maintain. He stated that his understanding is that the existing carport will be removed as part of the variance approval.

He further explained that various exceptions were granted for this development in 2001 that applies to almost every lot, including allowing a majority of the lots to have a five foot (5') side yard setback. He noted that the proposal is

to decrease that number even further.

Mr. Friesen noted that a five foot (5') setback would only allow for a seventeen foot (17') garage which would not permit two (2) vehicles.

Petitioner Presentation

Dale Crist, 220 The Willows, spoke on behalf of the request and advised that he is asking for a setback variation.

Mr. Friesen asked for confirmation that he would be okay with a three foot (3') setback as opposed to the requested two and half foot (2.5'). Mr. Crist stated that three foot (3') would be fine.

Mr. Friesen also asked for clarification that the carport will be removed. Mr. Crist advised that it will *not* be removed but that it will be shortened. He further stated that the carport will be part of the structure.

Mr. Riegsecker asked what type of roof the garage will have and Mr. Crist stated that he plans to reroof the house and that he will then combine them together to match. He stated that he will be using either asphalt or steel.

Mr. Hauflaire informed the Board that lot coverage is not addressed in the Residential R-4 district.

Mr. Friesen noted that there are several properties in the development that have carports in front of the garage.

Audience Comments

There was no one to speak to the petition.

Staff Report & Discussion

Mr. Hauflaire stated that the carport is currently approximately one foot (1') off the property line by a variance where five foot (5') is required. He pointed out that approval of the variance would be allowing for a three foot (3') setback for the garage. He advised that property lines are hard to distinguish in a mobile home park as the land is owned by a single entity that people then rent or lease.

Mr. Friesen noted that they will need to strike Condition #3.

Public hearing was closed.

Mr. Riegsecker asked if he will still have to meet the neighborhood rules. Mr. Hauflaire confirmed that the petitioner will and that he will also have to meet all building codes.

Action

A motion was made and seconded, Huffman/Holtzinger, to approve 09-34DV with the conditions listed in the Staff Report striking Condition #3.

Mr. Riegsecker asked who is to determine the lot lines. Mr. Hauflaire stated that it is not the Board's decision to make and that they all have a general idea of where the lines are for their lots.

The motion passed, 5-0.

09-35DV – Best Western & Sign Image Sales and Service request a developmental variance to permit the addition of a 60 square foot electronic message center to the existing 174 square foot freestanding sign. The subject property is generally located at 900 Lincolnway East and zoned Commercial B-3.

Mr. Hauflaire recommended a denial of the developmental variance to allow for a sixty (60) square foot electronic message center to be added to the existing sign. He noted that the sign is currently fifty-five foot (55') in height and approximately one hundred and seventy-four (174) square feet in area and that it significantly exceeds the ordinance standards of twenty foot (20') in height and sixty (60) square feet in area.

Mr. Riegsecker asked if the existing sign met the ordinance requirements when it was constructed. Mr. Haufaire advised that it did but became non-conforming when the ordinance was changed. In the past, he stated that three (3) square feet of sign was permitted for each linear foot of frontage. However, under the current ordinance, he noted that it is already three (3) times larger than what is allowed. He also stated that the ordinance states that changeable copy can be no more than fifty (50) percent of the total sign.

Petitioner Presentation

Lyle Ryman, Sign Image & Design at 1617 Cassopolis Street, Elkhart, spoke on behalf of the petition. He stated that he understands the Staff Recommendation and the fact that this is a large sign but pointed out that it did conform under the old sign ordinance. He noted that codes continue to change. He stated that he wants to see businesses succeed while, at the same time, not wanting things to look like Las Vegas. He pointed out for the Board a sample sign that he had running in the back of the Council Chambers and stated that it is basically what will be installed at the subject property. He made the point that most local hotels are not local businesses anymore but that this establishment still is. He noted that there are businesses on all four (4) sides of this property and that the new sign would have what is called a directional light that would act like a flashlight. He stated that it's considered a smart sign as it automatically adjusts its brightness and can also be manually adjusted. He advised that US 33 will be widened at some point in the near future and that the sign will then need to be changed and relocated. He stated that their plan would be to then request another variance to add a topper that would not be as large to the electronic message center sign and to remove the existing sign. He suggested adding conditions to the approval such as a time restriction requiring the change when the road is widened and also specifying the hours of brightness. He advised that safety standards are in place regarding electronic message center signs and noted that government studies have been conducted regarding this matter showing that these signs project the message to the brain much quicker than signs that you have to read. He pointed out that this is why construction signs have now been changed to LED signs. He closed asking that they approve the request with any conditions that they see as necessary.

Mr. Holtzinger asked why they can't just take down the existing sign now instead of asking for a few more years of having it. He questioned what will happen if the road isn't widened.

Mr. Ryman advised that there are a lot of financial questions with regards to the road widening and the relocation of the sign that are currently unknown.

Mr. Holtzinger stated that he doesn't see why that would affect removing the existing sign now. Then, if the sign is already in compliance at the time of the road widening, it can simply be moved.

Mr. Ryman advised that he has a computer program that works out sign data for him and that it tells him that this sign is too high. He stated that they are planning for the new portion to be at the appropriate level. He again asked that they allow for the existing sign to remain until the road is widened while also allowing for the new portion to be added. He reiterated that they would then come to the Board for a minor variance to allow for a topper to be added to the LED portion of the sign.

Mr. Riegsecker agreed that the height of the current sign is too tall.

Mr. Ryman also advised that he has been in touch with INDOT and that they anticipate taking right-of-way from both sides of US 33. If that's the case, he stated that they will have to move the sign and that there will be no way around it.

Scott Baker, 19096 CR 40, spoke as the owner and operator of Best Western. He advised that he has never seen nationality as an issue with his competition and he wanted to clarify that for the Board. He stated that Best Western is different from other chain hotels because it is a not-for-profit that helps privately owned hotels to operate. He advised that the name denotes a set of standards and that the purpose of this sign will be to better communicate with travelers and the general public about the specifics of his hotel. He noted that his property is older and that many would assume that it's old inside, as well, but he clarified that it is not. He stated that he offers lots of nice amenities such as a fridge and microwave in every room as well as pillow top beds and DVD/VCR combo in each

room. He stated that he will come back if this is not granted because he does want some way of communicating, even if it is smaller or words only.

Audience Comments

There was no one to speak to the petition.

Public hearing was closed.

Staff Report & Discussion

Ms. Huffman noted that there are no extenuating circumstances with this case such as broken sign faces or a changed franchise and that she would like to see a sign much closer to being in compliance.

Mr. Friesen stated that he appreciates a business' need to advertise but agreed that this is too far out of compliance.

Mr. Holtzinger agreed stating that he would like to see something closer to what is allowed.

Action

A motion was made and seconded, Holtzinger/Fairfield, to deny 09-35DV for the reasons listed in the Staff Report. The motion passed, 5-0.

Mr. Hauflaire advised that the petitioners will need to wait for six (6) months before they can reapply to the Board with the same request but that they can come back before that time if the request is significantly different.

09-01AP & 09-09UV – Sheryl Smallwood requests an appeal of the Zoning Administrator's decision that the 3-unit dwelling on the subject property is a non-lawful use. If not granted the appeal, the petitioner is requesting a use variance to permit a 3-unit dwelling in a Residential R-2 district. The subject property is generally located at 201 N. Indiana Avenue and zoned Residential R-2.

Mr. Hauflaire advised that there are two (2) steps on the table with the current request. He stated that the first request is that they overrule his decision that the three unit dwelling is a non-conforming use. He noted that there are approximately four hundred (400) non-conforming uses in the City and that they are not all tracked. He stated that the Planning staff has made determinations on cases administratively. For this case, he advised that he does not feel that there is enough information or good enough evidence to rule that the current use is a lawful non-conforming use. He further advised that there is a policy statement within the Planning Office and provided a copy of the statement to the Board. He noted that the burden of proof is on the applicant to demonstrate that the use is a lawful non-conforming and that the first decision to make is to determine whether or not the information provided is adequate and sufficient. He pointed out that information for this property has been provided from the Assessor's records, the Polk Directory, rent receipts and utility receipts. He further pointed out that most of the information provided by the applicant is from 2000 until present and that nothing goes beyond the 1970's. He stated that the zoning codes go back to 1961 and that this property was zoned Residential R-2 at that time. He explained that ruling against the appeal will mean that this will be considered a non-lawful non-conforming use and that no more than day-to-day maintenance is permitted and that, if damaged or destroyed more than 75%, it will not be allowed to be rebuilt. He advised that if the appeal is denied, the applicant is then requesting a use variance for a three unit in a Residential R-2 district. By granting the variance, he pointed out that the property will no longer be considered non-conforming and that the 75% rule will not longer apply.

Mr. Holtzinger asked if they will be given time to convert is back to a two-unit if it is deemed unlawful. Mr. Hauflaire advised that they can give them time to do so.

Mr. Holtzinger also asked why this was never discovered during rental inspections. Mr. Hauflaire advised that they proceed with inspections with the assumption that the uses are permitted and that they do not make judgments on the lawfulness of the zoning.

Karen Fairfield left the meeting at 5:30 p.m.

Mr. Hauflaire advised that the prospective purchaser wants documentation that the property is lawful. He came to the Planning Office to get that documentation and, because we ruled against the use, the current property owner is appealing.

Mr. Hauflaire further explained that the Board is to decide if this is lawful or non-lawful. If ruled lawful, the Board is done. If deemed non-lawful, they will then have to decide on the use variance request to permit the existing use forever. If the variance is denied, they will have to convert the three-unit to a two-unit.

Mr. Holtzinger asked if adverse possession plays a role in this matter. Attorney Shuler advised that State statute has exempted these types of actions against State and local governments. He further explained that just because they haven't enforced something for forty (40) years doesn't mean that they never can.

Petitioner Presentation

Cheryl Smallwood, 22753 Mallard Court, Goshen, spoke as the current property owner. She advised that the property came to her in 1988 as part of a divorce. She provided the Board with a previous overview of the documents that were submitted to the Planning Staff and noted that there is a rental permit from 1982 showing the property was three units at that time.

Attorney Shuler advised that the first zoning ordinance for this area was adopted in 1961 and that the use must have existed prior to that time and continuously since then. He also noted that the burden of proof is not "beyond a reasonable doubt" but more of a "more likely than not" for this type of decision.

Ms. Smallwood advised that there was an electric permit issued in 1978 for three units. She also advised that in 1967 the Polk Directory listed three (3) tenants with three (3) last names and three (3) phone numbers. She also added that in 1967 it was not likely that any unit would have had two (2) telephone lines. If this were to be considered proof, she pointed out that now she could take the three (3) units back to 1967 leaving only a six (6) year gap from 1961.

Ms. Huffman asked what the latest date is that lists this as only two (2) units. Mr. Hauflaire noted that the 1967 Polk Directory listed two (2) addresses of 201 and 201 ½ N. Indiana Avenue.

Ms. Smallwood advised that it has been very hard to get old records, even from the utility companies.

Ms. Huffman questioned how granting the appeal will be injurious as this has obviously been a three unit for quite some time. Even if granted, she noted that the 75% rule will still be in place.

Ms. Smallwood added that she wasn't able to get any records prior to 1967. She noted that she's talked to utilities and also to the previous owner and only made it back as far as 1982. She pointed out that there is R-3 zoning across the street and that this property is not in the middle of a single family district and that it will not be a sore thumb. She closed stating that she is asking for this to be declared a lawful non-conforming use.

Mr. Friesen asked where tenants park for the property. Ms. Smallwood advised that there are two (2) parking areas and provided maps to the Board. She advised that there are "No Parking" areas in the immediate area that were delineated in the 1990's but that there is still parking available for eight (8) cars.

Audience Comments

Owen Weaver, 60108 CR 13, Elkhart, stated that he is the prospective purchaser and that there is a purchase agreement in place. He advised that converting the property into a duplex is not feasible option and that it will either exist as a three unit or sit empty.

Mr. Riegsecker asked him to clarify the existing layout and asked if there would end up being multiple kitchens and issues if forced to convert it. Mr. Weaver confirmed that this would be the problem and that converting it would bring in the issue of building codes including the need for firewalls. He noted that the existing use seems to work

for the property and to blend into the neighborhood. He asked to Board to grant the appeal.

Amber Miller, 117 N. Indiana Avenue, spoke as a neighboring property owner. She stated that she is concerned about the parking if the property remains a three unit and the role that it will play in the neighborhood. She advised that there is not sufficient parking for multiple cars and pointed out that Indiana Avenue is a very busy street. She stated that the parking will not work according to the plan that the petitioner provided and also advised that the on-street parking along Clinton Street is generally taken by other residents in the area. She noted that the on-street parking makes the road narrow, as well. She advised that parking in the area is an issue even with this property sitting vacant and that, if occupied, she foresees it becoming a major issue.

Mr. Holtzinger asked if she has lived in her home while the subject property was occupied. She advised that she has and that it was very crowded.

Ms. Huffman asked if she has a single family home and Ms. Miller advised that she does. She also noted that, despite the fact that the adjacent zoning is R-3, most of the homes along Indiana Avenue are single family homes.

Ms. Smallwood advised that she has spoken with the prospective purchaser and he has agreed to improve an additional parking area off of Clinton Street for the use of this property.

Public hearing was closed.

Staff Report & Discussion

Ms. Huffman stated that she doesn't feel that the petitioner met the burden of proof.

Attorney Shuler advised that she is correct in that the petitioner did not show any direct evidence but that they are allowed to consider circumstantial evidence and to make inferences. He explained that they are to weigh the evidence and to decide whether it is more likely true than not. He further stated that they are not required by statute to show absolute.

Ms. Huffman advised that she only sees evidence as saying that three apartments showed up in 1967 and she noted that some division was present at that point but that the addresses were not yet split.

Mr. Riegsecker noted that three addresses were not documented until the late 1980's or early 1990's.

Attorney Shuler again explained that they are allowed to infer.

Mr. Hauflaire stated that this is a tough decision to make and that they don't have to see it back to 1961 to make the decision. He advised that Staff was not comfortable making the decision which is why it was brought to the Board for a decision.

Action

A motion was made and seconded, Holtzinger/Riegsecker, to deny 09-01AP based on the recommendations in the Staff Report. The motion passed, 4-0.

Mr. Friesen introduced case 09-09UV as the second half of the request made by the petitioner.

Ms. Huffman asked how many letters were sent and how many responses were received. Mr. Hauflaire noted that twenty-eight (28) letters were sent and that no responses were received other than today's audience member.

Mr. Hauflaire advised that he is recommending denial of the request and explained the requirements necessary for a lot to be permitted to have a duplex. He advised that this lot only has 8,600 square feet where 10,000 is required and that it does not meet the R-2 standards for a duplex, let alone a three-unit dwelling. He agreed that on-site parking is an issue creating a poor parking scenario. Again, he advised that he is recommending denial.

Ms. Huffman asked if they need a variance to allow a duplex since they do not meet the R-2 requirements. Mr. Hauflaire advised that they can clearly demonstrate that there have historically been two units at this site.

Ms. Huffman asked if they can require that parking be improved if it were converted to a duplex and if it would then be considered a lawful, non-conforming use. Mr. Hauflaire stated that he believes that they've demonstrated that this has been a duplex and that it would be considered a lawful, non-conforming use.

Ms. Huffman asked Mr. Weaver if he would not purchase this property if it had to be converted to a duplex. He confirmed her statement advising that it was constructed as three units and that he would have no interest in converting it to a duplex.

Ms. Huffman also asked Mr. Weaver if he would be willing to work with Mr. Hauflaire on the parking situation. Mr. Weaver advised that he would.

Mr. Holtzinger advised that he cannot see granting the right for three units forever.

Ms. Huffman stated that she cannot see making this property unusable.

Ms. Smallwood stated that if the Board decides not to grant the variance that this property's value will drop \$20,000 to \$30,000 dollars. She advised that there are currently three (3) furnaces, three (3) electric bills, three (3) water bills, etc... and that to combine two (2) of the units is a huge financial investment. She noted that the three (3) furnaces are located in the basement of the property.

Ms. Huffman reiterated that Ms. Smallwood is saying that they cannot do something that will be injurious to her and she asked Attorney Shuler for confirmation. Attorney Shuler stated that this is a factor to consider. Mr. Hauflaire stated that his understanding is that they're not to consider these types of factors.

Ms. Smallwood stated that this property came to her as part of a divorce settlement and that it has sat vacant since she acquired it. She advised that although the driveway has grass growing that there is gravel beneath the grass.

Mr. Holtzinger asked how long it has sat empty. Ms. Smallwood stated that it has been empty since August 2007 and that it has taken her this long to find a buyer for the property.

Mr. Riegsecker asked Mr. Weaver if he would be agreeable to improving enough parking to make this site better. Mr. Weaver stated that he would and that a total of five (5) spaces would be required.

Mr. Holtzinger asked if there is room on-site for parking and Mr. Hauflaire confirmed that there is.

Amber Miller, 117 N. Indiana Avenue, stated that she would like to see the parking situation improved. She stated that she would like to see it improved on the north side and not off of Clinton as they would remove existing on-street parking for the driveway.

The public hearing was closed.

Staff Report & Discussion

Mr. Hauflaire suggested having the parking matter come back before the Board if Mr. Weaver and Planning Staff cannot come up with an acceptable plan.

Ms. Huffman stated that she would feel like they're damaging this neighborhood if they make it so that this property sits empty.

Action

A motion was made and seconded, Huffman/, to grant 09-09UV as requested by the petitioner with the condition that they provide five (5) on-site parking spaces and that the parking shall be approved by the Zoning

Administrator. In addition, if unable to agree on the plan, the matter shall come back before the Board.

Mr. Riegsecker asked what will happen if the structure burns to the ground. Mr. Hauflaire advised that it would be allowed to be rebuilt as a three unit with a similar footprint.

Ms. Huffman stated that she feels this is the best decision for the property.

The motion passed, 4-0.

IX. Audience Items: None

X. Staff/Board Items:

Mr. Hauflaire advised that a variance was previously granted for the property at 2508 College Avenue to permit partial landscaping where full landscaping is required. In lieu of their previous plan, he advised that they are now requesting permission to be able to stagger the trees on each side of the fence instead of all on one side.

The Board approved the minor modification.

Ms. Huffman again noted that there are dogs for sale in the Market Centre parking lot every weekend. Mr. Hauflaire advised that he spoke with the owner of Pet Supplies Plus about this and that he encouraged them to talk to Wal-Mart.

Ms. Huffman advised that they've already complained to the landlord with no avail.

Mr. Hauflaire stated that he will look into the matter.

XI. Adjournment: 6:45 pm

Respectfully Submitted:

Becky Hershberger, Recording Secretary

Approved By:

Ardean Friesen, Chair

Karen Fairfield, Secretary