

Minutes - Goshen Board of Zoning Appeals
Tuesday, November 24, 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 Jim Kolbus.
- II. Approval of Minutes from 9/22/09 & 10/27/09: Holtzinger/Fairfield, 4-0
- III. The Zoning/Subdivision Ordinances and Staff Reports were unanimously filed into Record: Fairfield/Holtzinger, 4-0
- IV. Postponements/Withdrawals: None
- V. Variances
09-36DV – JAAD, LLC requests a developmental variance to permit a 15' rear yard setback where 25' is required. The subject property is generally located at 1404 Berkey Avenue and zoned Residential R-1.

Mr. Hauflaire stated that two issues will be handled with this case. He advised that the first issue is the subdivision which will be required to go before the Plan Commission following this hearing. It will have two lots with the existing home remaining and a second being constructed on the southern lot as shown on the plans by the petitioner. He stated that they are currently asking for a rear yard variance. He noted that this is a narrow lot with 72.5' of frontage along Berkey Avenue. He advised that the developable area is approximately 22.85' after front and rear setbacks are met. He noted that there will be sufficient area for a lot and sufficient room for a good sized home. He stated that the position of the Staff is that this is a developable lot and that the applicant would like to put a home with a little more depth than the 22.85'. He noted that they have been provided with a copy of the proposed floor plan and that it has architectural features that will make it more visually attractive. He advised that he is recommending approval of the variance request for a reduced rear yard setback.

Petitioner Presentation

Adlai Schrock, 2523 Messick Drive, with JAAD, LLC stated that he purchased the home on the corner in foreclosure and that his plan was to fix it up for the neighborhood. He advised that their goal was to make it nicer so they did. He pointed out that the reduced setback will allow them to add a couple of offsets to the home and that the floor plan provided will be very similar to the home that is built if not exact. He noted that there will be no entrances or exits at the rear of the home and that the patio will be the south of the home and that the garage and driveway will be on the north end. By doing so, the home will better fit the lot and will look better. Regarding the easement shown, he advised that the City Engineer recommended having it off of Berkey instead of Bainbridge and that there will be an eight (8) foot area between the existing home and the property line for placement of utilities. He stated that it will be a continuous easement that will run to the subject property and that it will not be on the neighbor's property.

Audience Comments

Sharon Johnson, 1310 Berkey Avenue, stated that she has lived in the neighborhood for 39 ½ years and that she purchased the land for the open spaces available with the lots and the country feel. She advised that she is not in favor of the variance being granted. She stated that she would prefer to have the home built closer to Bainbridge and that the neighbors would prefer to see no home built on this property as they enjoy the open space. She advised that this is not a subdivision area and that from the church almost to Greene Road all the properties are wide open in the back. She closed reiterating that she is not in favor of the variance or of a house being built there.

Grace Johnson, 1402 Berkey Avenue, advised that they own the property to the immediate east of the subject property. Regarding the easement, she noted that most subdivisions require a fifteen (15) foot easement and that

this does not provide much room. She provided a copy of the survey that was completed on their property in 1989 and advised that the easement issue and the amount of space available needs to be addressed before any action can be taken. She stated that their yard is used by the family and explained how valuable it is to them and that they enjoy the wide open space of the neighborhood. She advised that she is not in favor of allowing this to be built close to the line and on a small lot. She pointed out that most lots in the area are over an acre and noted the pictures that were provided in what she handed out. She also included an aerial photo and pointed out that this action will change the ambiance of the neighborhood. She asked the Board to deny the request.

Mr. Holtzinger asked if there are currently two accessory structures for the existing home. Ms. Johnson stated that there are and that Mr. Schrock has recently sided one of them and she assumes he intends to keep it. Regarding the lot lines on the photo that the petitioner submitted, she noted that the lines are drawn by the county and that they can be off by up to ten (10) feet. She pointed out that the distance between his shed and the property line is not eight (8) feet and that there may not be room for the utilities that he is proposing

Mr. Hauflaire advised that the easement issue may not be relevant to this discussion and that it is an engineering issue. He agreed that they typically ask for ten (10) feet for easements but that this issue will be addressed as part of the platting process.

Carol Fisher, 1502 Berkey Avenue, spoke in opposition to the request. She advised that she has lived in her home for fifteen (15) years and that it has always been wide open without the feel of a subdivision. She noted that her patio will be looking right at this house and that it will affect her in the summertime when she is outside. She advised that she feels that this home will look out of place with all the older homes in the neighborhood. She also noted her concerns about the location of this home outside of the existing subdivision.

Tina Bontrager, 1506 Berkey Avenue, stated that she tinks its great that someone has purchased and fixed up the existing house on 1404 but that she is opposed to placing another house out of place in this area. She pointed out that they all have long, narrow yards and that this will not fit the aesthetics of the neighborhood. She stated that she is opposed to the request.

Adlai Schrock, 2523 Messick Drive, advised that they will not touching any of the neighboring yards and that they are trying to propose a house that fits into the neighborhood. He stated that they will continue to try to do so even more and that they will have trees in the rear yard as Mr. Hauflaire requested. He added that they will not be removing any trees from the existing yard. Regarding the easement, he advised that they will be able to make it fit into a five (5) foot easement.

Mr. Holtzinger clarified that they can build the house without the variance but that they are requesting it to make the home more attractive. Mr. Schrock confirmed that statement stating that they feel that the offsets will make the home more compatible with the neighborhood. He stated that they will do whatever they can to appease the neighbors and that they will not affect any of their backyards.

Mr. Hauflaire advised that this will also come before the Plan Commission for subdivision approval and that their approval is administrative in that, if it meets the subdivision ordinance, they cannot deny the request. If the variance is granted, he advised that the plat will then show the reduced setback. He advised that the current plan appears to meet all the requirements and exceeds many such as lot size. He suggested one option would be that they could instead reduce the front yard setback to twenty (20) feet and not give a variance in the rear yard. He listed the two (2) conditions from the Staff Report and asked that the Board give him flexibility to work out a suitable landscaping plan.

Public hearing was closed.

Staff Report & Discussion

Ms. Fairfield advised that this is a problem that occurs when you live in town, even within established neighborhoods. She further stated that she understands where they're coming from but that this is part of living in the city.

Mr. Holtzinger agreed stating that the same thing has happened around his house.

Mr. Riegsecker asked Mr. Hauflaire if this will meet the subdivision ordinance requirements. Mr. Hauflaire stated that he believes that it will.

Mr. Riegsecker noted that the amount of the setback reduction doesn't really matter at this point because the issue is that the neighbors don't want the house there at all. He stated that he is bothered by the subdivision process.

Attorney Kolbus advised that the subdivision laws are established by State laws.

Mr. Riegsecker stated that, by putting the house here, they'd be essentially moving Larimer out and losing the open feel. He noted that it bothers him.

Mr. Holtzinger stated that this is how it works unless they own the land and can control it.

Action

A motion was made and seconded, Holtzinger/Fairfield, to approve 09-36DV with the conditions listed in the Staff Report. The motion passed, 4-0.

09-37DV – Lois Widmer & Miller Bros. Builders, Inc. request a developmental variance to permit a 6' front yard setback along Cottage Avenue where 25' is required to allow for the construction of a 16' x 22' detached garage. The subject property is generally located at 405 E. Plymouth Avenue and zoned Residential R-1.

Mr. Hauflaire advised that this is a fairly straightforward case and that they are requesting permission for a detached one (1) stall garage. He noted that Cottage sometimes functions as an alley as opposed to a right-of-way and that, in this area, that appears to be the case. He advised that there are other garages in the area with similar setbacks and that he is recommending approval of the variance request. He pointed out that there is an existing accessory structure that will be coming down as part of the new garage.

Petitioner Presentation

Dan Miller, 1819 Middlebury Street, spoke on behalf of the petitioner. He advised that he has reviewed the Staff Report and confirmed that the carport will be coming down. He stated that they are asking for this because most other buildings to the north are in line with what is being proposed and that to set it back at twenty-five (25) feet would not work for this property.

Audience Comments

Terry Bird, 820 S. 7th Street, asked for clarification as to where exactly the garage would be built. Mr. Friesen showed him a copy of the proposed plan. Mr. Bird had no further concerns.

Public hearing was closed.

Staff Report & Discussion

There was no discussion amongst the Board.

Action

A motion was made and seconded, Holtzinger/Riegsecker, to approve 09-37DV with the conditions listed in the Staff Report. The motion passed, 4-0.

IX. Audience Items: None

X. Staff/Board Items:

09-12DV - Kroger Food Stores requests four (4) developmental variances to permit a drive-through within 500' of another drive-through on the same side of the street (Wendy's), to permit a freestanding sign with a height of 20' and an area of 60 square feet where no more than 15' in height and 50 square feet in area is permitted, to permit an elevation for the building kiosk that would not be 2' above the 100 year flood

elevation as required by the ordinance and parking and driving aisles within the front, rear and side yard setbacks as proposed on the submitted site plan where 35' is required along Pike Street, where 30' is required along Denver Street, and where 5' is required on the rear and side lot lines. The subject property is generally located at 612 W. Pike Street and zoned Commercial B-3

The petitioners are requesting that the approved variance be extended for an additional six (6) months. They have provided documentation showing that they have continued to move forward on this project.

Mr. Hauflaire briefly reviewed the original request and noted that their six (6) months is almost up. He stated that the Board typically asks for substantial progress to be made. He noted that the petitioner has provided a timeline and that Staff feels that they're showing a lot of behind the scenes work has been completed.

A motion was made and seconded, Fairfield/Riegsecker, to extend the variance for an additional six (6) months from today. The motion passed, 4-0.

XI. Adjournment: 4:40 PM

Respectfully Submitted:

Becky Hershberger, Recording Secretary

Approved By:

Ardean Friesen, Chair

Karen Fairfield, Secretary