

Minutes - Goshen Board of Zoning Appeals  
Tuesday, February 23, 2016, 4:00 p.m.  
Council Chambers, 111 E. Jefferson Street  
Goshen, Indiana

- I.** The meeting was called to order with the following members present: Tom Holtzinger, Aracelia Manriquez, Felipe Merino, and Ardean Friesen. Also present was Assistant City Planner Abby Wiles and Assistant City Attorney Jim Kolbus. Absent: Kelly Huffman
- II.** Approval of Minutes from 1/26/16: Mr. Friesen noted that on page 3 of the minutes, Ms. Huffman was referred to as “Mr.” Huffman and asked that the change be noted. The minutes were approved as amended, Holtzinger/Merino 4-0.
- III.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Holtzinger/Merino 4-0
- IV.** Postponements/Withdrawals: None
- V. Variances – public hearing items**  
**16-02UV & 16-01DV** - 7-Eleven Inc. and L&R Construction Services request a use variance to allow illuminated wall signs on the south, west and north canopy elevations where wall signs are not permitted in the Residential R-1 zoning district and illumination of wall signs adjacent to a residential zoning district is not permitted and a developmental variance to allow a new illuminated freestanding sign, approximately 32 square feet in area and 16 feet in height, with an electronic pricing panel, zero foot setback and no landscaping, relocated and modified from previous variance approvals. The subject property is generally located at 1000 S Main Street and is zoned Residential R-1 District.

*Staff Report:*

Ms. Wiles explained a gasoline service station has operated on this property since at least the early 1970's with a number of variances granted in the past for the expansion of the non-conforming use and signage. Today's request is for use and developmental variances to allow new illuminated canopy signs and a new freestanding sign. Previously, canopy signs were located on the south, west and north elevations; however, the Planning Department did not have a record of approval for these signs or for the illumination. The Zoning Ordinance allows sign refaces for non-conforming signs, but the proposed signs are not exact faces, as they are slightly larger than the prior signs. The petitioner also requests internal illumination of the wall signs where illumination of wall signs adjacent to a residential use is not permitted.

The petitioner also requests permission for a new freestanding sign. The existing sign is approximately 101 square feet in area and approximately 24.5 feet in height. Although it was approved with a five foot setback by the BZA in 1992, additional right-of-way was dedicated and it is now located in the City right-of-way. A monument-style sign of approximately 32 square feet would be preferable in this residential neighborhood, but the configuration of the lot and interference with vision clearance does not allow this. As proposed, the sign is 32 square feet in area, 16 feet in height, and has an eight foot vision clearance area between the ground and the bottom of the sign. A zero foot setback is requested, but the sign would be moved entirely onto private property, with curbing at the base of the sign. A new electronic pricing panel is also being requested. Because the existing sign was previously approved by the BZA, it is not considered non-conforming and therefore an electronic pricing panel may not be added without approval from the BZA.

Staff recommends approval of the canopy (wall) signs without illumination. Staff also recommends approval of the freestanding sign, 32 square feet in area, 16 feet in height, with a zero foot setback and no landscaping and

illumination of the electronic pricing panel only. Staff recommends the remaining panels shall be non-illuminated.

Ms. Wiles noted two calls were received regarding this request. One caller asked for clarification of the request, while the second caller noted concerns regarding light pollution from the signs.

*Petitioner Presentation:*

Brian Lance, 5910 Long Point Drive, Davisburg, MI spoke on behalf of the petition. He stated they concur with all of Ms. Wiles' recommendations, with the exception of the illumination of the entire main identification sign. He stated they feel non-illumination of the canopy signs is reasonable, but it is important for them to have illumination of the proposed identification sign. He explained the size of the sign will be reduced significantly and they are here today because they want the digital price sign illuminated. He noted if this sign is approved, there will be less light than there is today because of the reduction in size. He noted there is a light pole at the corner that will also be removed as part of this proposal.

Mr. Friesen asked if this location is open 24 hours per day, seven days per week.

Mr. Lance replied that it is.

Mr. Holtzinger asked if they have given any thought to restricting hours in which the sign could be lit.

Mr. Lance replied that this is a 24 hour store and feels it might be confusing to customers to only have the digital price sign lighted. He noted this would be the only designation they can see in the evening.

Mr. Holtzinger asked if the digital sign would provide enough illumination and act as an indicator to the average motorist.

Mr. Lance responded it would be, but for the price only. He went on to say if this is not approved today, they will keep the current sign.

*Audience Comments:*

Lois Bare, 1015 S 7<sup>th</sup> St, Goshen spoke in opposition to the request. She stated her questions have been answered and is pleased that the signage will be lower and much smaller. She noted the current lighting is a nuisance.

Rose Stutzman, 915 S 7th Street also spoke in opposition to the request. She explained she is here to make sure she understands where the sign will be placed once it has been relocated.

Mr. Friesen explained the sign will be moved away from the road and closer to the building.

Ms. Stutzman stated she feels the reduction in light will make this better.

Adam Scharf 1631 ½ S Main, also spoke to the petition. He questioned if there will be some sort of condition placed upon the message portion of the sign.

Ms. Wiles asked the petitioner to speak to this question, noting it is her understanding that this is solely an electronic pricing panel.

Mr. Scharf stated if this is a pricing panel only, he has no objection, provided it is not high intensity and does not contain a scrolling message. He feels that allowing the sign to be lighted 24 hours per day, seven days per week is appropriate for this situation and would not cause an undue burden on the surrounding neighborhood.

*Petitioner rebuttal:*

Mr. Lance clarified this price sign will remain static.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Friesen stated he is glad we have been able to come to an agreement that the awning signs will not be illuminated and for the reduction of size for the freestanding sign. He acknowledged this is a move in the right direction and will allow less light in the neighborhood.

Attorney Kolbus asked if his motion includes that only the canopy/wall signs be non-illuminated. He asked for clarification if the freestanding sign can be illuminated.

Mr. Friesen agreed that is his intention.

Mr. Holtzinger questioned if there could be a restriction on the lighting, so the sign would not be illuminated between the hours of midnight and 6:00 a.m. or similar. He asked if the pricing would provide enough light, without the other digital display.

Mr. Friesen stated that would indicate to him that the business is closed.

Mr. Holtzinger agreed that could be a valid argument as well, but noted if he lived in the neighborhood the amount of illumination would bother him.

Mr. Friesen pointed out the size of the sign would be decreased and the unlit wall signs will decrease the amount of light from the property.

Mr. Merino noted the reduction in light is a positive step, but he is concerned about the impact the LED lights might have on driver's visibility along Main Street. It is his feeling there needs to be some sort of offset lighting to take away from the brightness of the LED.

Mr. Friesen asked if the lighting from the 7-Eleven store would help with that.

Mr. Merino stated that would likely depend on the intensity of the LED lights.

Mr. Friesen pointed out there are currently lights located under the canopies which should help with this.

Mr. Merino stated he feels the canopy lights should be enough of an indicator that the station is open.

Mr. Holtzinger asked if he would consider restricted lighting for the sign, or if he prefers no lighting at all.

Mr. Merino stated if the canopy lights are on, he feels lighting for the numbers is enough.

*Action:*

A motion was made and seconded, Merino/Holtzinger to adopt the finding of the Board and approve 16-02UV and 16-01DV with the following conditions and commitments:

*Canopy signs - Conditions:*

1. An approved zoning clearance form is required.
2. The variance shall become null and void unless a Building permit has been issued and substantial progress has been made within six (6) months of the date of approval.
3. Deviation from the requirements and conditions of the variance may result in the cancellation or termination of the approval or permit.
4. The BZA approval shall be effective when the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen BZA staff and when all conditions of approval have been met.
5. No zoning clearance form will be issued until the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen BZA staff and until all conditions of approval have been met.

*Canopy Sign - Commitments:*

1. The wall signs on the south, west and north canopy elevations shall be non-illuminated.

*Freestanding Sign - Conditions:*

6. An approved zoning clearance form is required.
7. The freestanding sign must be relocated onto private property, per the "Proposed Site Plan" submitted with the application.
8. The variance shall become null and void unless a Building permit has been issued and substantial progress has been made within six (6) months of the date of BZA approval.
9. The BZA approval shall be effective when the executed and recorded Results/Commitment form has been returned to the City of Goshen BZA staff and when all conditions of approval have been met.

10. No zoning clearance form will be issued until the executed and recorded Results/Commitment form has been returned to the City of Goshen BZA staff and until all conditions of approval have been met.
11. Deviation from the requirements and conditions of the variance may result in the cancellation or termination of the approval or permit.

*Freestanding Sign - Commitments:*

1. Illumination of the electronic pricing panel is permitted 24 hours per day.
2. The illumination of all other sign panels in the freestanding sign must be turned off daily from 12:00 am to 6:00 am.

The motion passed unanimously by a vote of 4-0.

**16-02DV** - The City of Goshen, Elkhart County Board of Commissioners and Abonmarche Consultants, Inc. request a developmental variance to allow the following:

- a front (east) setback of 12' where 30' is required along N 5th Street;
- a side (south) setback of 0' where 5' is required;
- a rear (west) setback of 3' where 10' is required;
- a side (north) setback of 7' where 60' is required adjacent to residential use;
- a row of evergreen trees along the north property line adjacent to a residential use where bufferyard full landscaping is required;
- a 0' side (south) setback where 10' is required (east side of street);
- development in the floodway fringe

The subject property is generally located at 308-311-313-317 N 5th Street and is zoned Industrial M-1 District.

*Staff Report:*

Ms. Wiles explained this is the Goshen Water Treatment plant, located on North 5th Street. The property consists of multiple parcels, located on both the east and west sides of N 5th Street. Seven developmental variances are requested for improvements associated with a new parking lot on the west side of North 5th Street and the reconfiguration of a parking and driving aisle on the east side of the street, immediately south of the building.

Four of the developmental variances are for reduced setbacks along the front, sides and rear for the new parking lot on the west side of N 5th Street. NIPSCO right-of-way is located to the south, an unimproved platted alley and industrial use is located to the rear and residential use to the north. A developmental variance is also requested to allow a row of evergreen trees, where bufferyard landscaping would be required adjacent to residential use. A developmental variance is also requested for a reconfigured driveway on the east side of N 5th Street. Although the existing driveway currently has a zero foot setback, some modifications are proposed, so a variance is required. The final developmental variance being requested today is for development in the floodway fringe for the new parking lot and the reconfigured driveway. This property is properly zoned, but configuration of the parcels would make the development of the parking lot difficult without variances.

Staff recommends approval of the requested variances with the conditions listed in the Staff Report.

*Petitioner Presentation:*

Brad Mosness, 750 Lincolnway East, South Bend, IN spoke on behalf of the petition. He stated this is part of the City's 5th Street reconstruction project and necessitated by the State of Indiana's US 33 realignment project, that will run along the south side of the railroad tracks. Utilities are in the way and must be moved for the project and involves a new storm sewer, along with a new and larger water main. A turnaround is proposed on 5th Street. The employee parking on the west side of the street will be enlarged and the parking lot on the south side of the building will be removed. The drive will be improved for delivery trucks and greenspace will be added.

Mr. Friesen asked for clarification on the turnaround.

Dustin Sailor, 204 E Jefferson Street, Goshen responded that since the railroad tracks are closed, vehicles need a place to turn around.

Mr. Merino pointed out there is a sizeable house that remains on the west side of the street and asked if there had been any contact with the homeowner.

Mr. Sailor stated the City made an attempt to purchase the property, but received no response from the homeowner.

*Audience Comments:*

Valerie Chezem, 211 S 21st Street, Goshen, spoke to this petition. She questioned if a path would be across the railroad tracks and asked if the track that goes behind the water plant will remain.

Mr. Sailor stated the path across the railroad track will be eliminated because the crossing arms have been removed and it will no longer allow for safe passage across the tracks. He stated this is part of the reason for the realignment along the south side of the tracks because that path will no longer be used. The bridge across Rock Run Creek will be relocated at some point.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Merino asked if City staff received any calls from the homeowner discussed earlier with Mr. Sailor.

Ms. Wiles replied that the Planning Office has not heard from this, or any other homeowner regarding this petition.

*Action:*

A motion was made and seconded, Holtzinger/Merino to find with the recommendations and conclusions of the Staff Analysis and approve 16-02DV with the five conditions listed in the Staff Report. The motion passed unanimously by a vote of 4-0.

**16-03UV & 16-03DV** - Virgelina Esparza and Brenda Troyer request a use variance to allow a restaurant (not including drive-ins) in an Residential R-2 zoning district where the use is permitted in the Commercial B-2, B-3, B-4, Industrial M-1 and M-2 zoning districts and a developmental variance to allow seven (7) onsite parking spaces where nine (9) are required. The subject property is generally located at 100 N 8th Street and is zoned Residential R-2 District.

*Staff Report:*

Ms. Wiles explained this property is located in a predominately residential neighborhood, and contains a commercial building that has been approved for a number of past variances. Approved variances include a self-serve laundry, a contractor's office with inside storage, and a wholesale packaging and distribution company. All previously approved variances included conditions limiting the scope of the use, including the hours of operation, number of employees, signage, lighting and retail sales.

Today's request is for a use variance to allow a restaurant (without drive-in) where the use is not permitted. A developmental variance to allow reduced onsite parking is also requested. The required number of onsite parking spaces, which is based on the number of employees and the seating capacity, is calculated at nine spaces; seven spaces are available.

The property has insufficient parking and it is likely there would be commercial deliveries associated with the restaurant use. For these reasons, Staff recommends denial of the requested variances.

*Petitioner Presentation:*

Brenda Troyer, 58190 County Road 29, Goshen spoke on behalf of the petition. She stated she is the current owner of this property.

Virgelina Esparza, 419 Center Street, Goshen, is also here to speak to this petition.

Ms. Troyer stated she has been in contact with the petitioners and they anticipate that the use will be very limited. At this point, they only intend to be open from approximately 8:00 am to 3:00 pm on Saturday and Sunday. If they decide to open during the week, hours of operation would be approximately 11:00 am to 4:00 pm. She acknowledged semi-truck deliveries in this area are an issue, but because of the limited business hours, deliveries will be minimal. It is possible the new owners could even pick up their own orders.

Mr. Friesen noted when the previous variance was granted for the herbs and salts, the BZA limited deliveries. Ms. Troyer affirmed that the condition of approval was that they were required to meet the semi-trucks offsite.

Mr. Friesen asked for clarification on days of operation.

Ms. Esparza stated that, to begin, they plan to operate on weekends, from approximately 11:00 a.m. to 5:00 p.m. They do not anticipate evening hours past 6:00 p.m.

Attorney Kolbus asked how many employees would be there at one time since parking also takes into account the number of employees.

Ms. Esparza stated they will likely have four employees at one time and because they all live nearby, they would ride to work together.

Mr. Merino stated this is a small site, but feels it is this would be good for LaCasa and Work Release employees. He acknowledged semi-trucks would have a difficult time delivering here.

Ms. Troyer stated the fire inspector set the maximum occupancy at 28, but she feels this is probably too high.

Ms. Wiles clarified that the number was set by the fire inspector, based upon information provided by Ms. Esparza.

Ms. Troyer noted carry-out customers are expected to be greater than dine-in customers.

Mr. Merino agreed that this appears to be a good location for a carry-out restaurant.

*Audience Comments:*

Valerie Chezem 211 S 21<sup>st</sup> Street, spoke in support of this petition. She stated she likes the idea of a neighborhood restaurant.

Julia King, 312 River Vista Drive, also spoke in support of this petition. She stated she is familiar with this neighborhood and feels this would be a good fit at this location.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Friesen noted this property has a history of trying to fit into the neighborhood and he is happy to see that someone would like to develop a restaurant here. He pointed out that the limited hours of operation could be an advantage and feels traffic will be limited because of the small size of the restaurant. He stated he would be willing to support this request with limited hours of operation and the stipulation that no semi trucks are allowed.

Ms. Wiles asked that if the Board agrees to this request, to include the standard language in their motion which includes conditions of approval.

Mr. Merino pointed out there is currently a sign there from the former Laundromat which he hopes will be reused and that no additional lighting is added here.

Ms. Wiles stated a sign was not presented as part of this variance request, so they would only be allowed to reface the existing sign.

*Action:*

A motion was made and seconded, Friesen/Holtzinger to adopt the findings of the Board and approve 16-03UV and 16-03DV with the following conditions and commitments:

*Conditions:*

1. An approved zoning clearance form is required.
2. The variance shall become null and void unless a Building permit has been issued and/or substantial progress has been made within six (6) months of the date of approval.
3. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.
4. The proposed restaurant use must meet all Engineering, Utility, Building, and other applicable City requirements
5. The proposed restaurant use must meet all applicable Elkhart County Health Department requirements.

*Commitments:*

1. Hours of operation are limited to 8:00 am to 5:00 pm daily, Monday through Sunday.
2. Semi-truck deliveries to the site are prohibited.
3. Maximum seating capacity is limited to 28 persons.

The motion passed unanimously by a vote of 4-0.

**16-04DV** - City of Goshen Redevelopment and Abonmarche Consultants, Inc. request a developmental variance to allow development in the floodway fringe for a detention basin and site improvements for the Steury Avenue/Lincoln Avenue Roadway Reconstruction and Drainage Improvement Project. The subject properties are generally located at 714, 716, 718, 800 E Lincoln Avenue (zoned Residential R-1 District), 828 E Lincoln Avenue (zoned Industrial M-2 District) and 922 1/2 E Lincoln Avenue (zoned Industrial M-1 District).

*Staff Report:*

Ms. Wiles explained the subject property consists of six parcels along Lincoln Avenue near the intersection of Lincoln Avenue and Steury Avenue. The request is to allow development in the floodway fringe for a detention basin and site improvements. This project is part of the improvements along the Steury Avenue corridor. Improvements along Steury Avenue include a new storm sewer that will direct stormwater to the proposed detention pond, which will overflow into Rock Run Creek. This project has been approved by the Elkhart County Drainage Board and has been submitted to IDEM. It is expected that this project will benefit the surrounding area by improving the road conditions and by addressing the flooding along Steury Avenue and Lincoln Avenue. Staff recommends approval of the request.

*Petitioner Presentation:*

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend spoke on behalf of the petition. He stated this is Phase I of the City's Steury Avenue/Lincoln Avenue project. He noted the City has purchased and removed the existing residential homes along the west side of the project, noting the stormwater detention basin will be located where the existing salvage yard is located. Phase I consists of the new stormwater basin that will accept drainage from Lincoln Avenue and Steury Avenue once they are improved by the City as part of future phases. He explained it includes an outlet into Rock Run Creek as well as a future building site on the western part off of Lincoln Avenue.

Mr. Friesen asked if they anticipate any contamination from the existing salvage yard.

Mr. Mosness stated the City is doing environmental work to determine the expense and proper measures to clean the site.

Ms. Wiles noted that a previous plan that was submitted indicated a parking lot that will serve East Gate Market and questioned if Ms. Manriquez should recuse herself from this case since she is the neighboring property owner. She went on to explain further details need to be worked out before this comes to the BZA and if it is done, it would have a zero foot setback. She noted this might come back to the BZA in a future phase of the project. Attorney Kolbus asked Ms. Manriquez if this will have a financial impact on her business. Ms. Manriquez stated they have been asking for additional parking area. Attorney Kolbus recommended Ms. Manriquez step down since this could benefit her if the project moves forward.

*Ms. Manriquez recused herself at 5:01 p.m.*

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Sailor noted the salvage yard property was purchased through the Redevelopment Department and a Brownfield grant was obtained through the EPA to pay for cleanup of the site. He noted because this is a Redevelopment site, there is a desire to have something redeveloped there in addition to the retention pond. He went on to explain a small parcel has been created and because most sites in the City are required to have their own onsite retention, the stormwater will be made available through the City's retention area.

Mr. Friesen asked if this would be a residential building site.

Ms. Wiles responded the parcel is currently zoned residential, but there is interest in rezoning it or bringing it before the Board for a commercial use. She explained she does not believe an end use has been determined.

*Action:*

A motion was made and seconded, Holtzinger/Merino to find with the recommendations and conclusions of the Staff Analysis and approve 16-04DV with the five conditions listed in the Staff Report. The motion passed unanimously by a vote of 3-0.

*Ms. Manriquez rejoined the meeting at 5:05 pm*

**VI.** Audience Items:  
None

**VII.** Staff Board Items:  
None

**VIII.** Adjournment: 5:06 pm Friesen/Holtzinger 4-0



Respectfully Submitted:

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Lori Lipscomb, Recording Secretary

Approved By:

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Ardean Friesen, Chair

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Kelly Huffman, Secretary