

Minutes - Goshen Board of Zoning Appeals
Tuesday, May 24, 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, Felipe Merino, and Ardean Friesen. Also present was Assistant City Planner Abby Wiles and Assistant City Attorney Jim Kolbus. Absent: Aracelia Manriquez, Kelly Huffman
- II.** Approval of Minutes from 4/26/16: Holtzinger/Merino 3-0
- III.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Holtzinger/Merino 3-0
- IV.** Postponements/Withdrawals: None
- V. Variances** – public hearing items
16-06UV – Ana Salazar requests permanent approval of a use variance, approved for two years at the May 27, 2014 BZA meeting, for a Child Care Home where the Conditional Use requirements cannot be met and the home is not the legal residence of the provider. The subject property is generally located at 1415 S Main Street and is zoned Residential R-1 District.

Staff Report:

Ms. Wiles explained that a Conditional Use permit was issued in 2007 for a Child Care Home at the subject property. Child Care Homes are subject to the conditions in the Goshen Zoning Ordinance for both Home Occupations and Child Care Homes. One of the conditions of Home Occupations is that the occupation must be conducted by the occupants living in the dwelling unit, but in March 2014 the petitioner moved to a home outside the City limits. The petitioner's employee resides in the second floor of the subject property.

The second condition not met is that the occupation must be clearly incidental and subordinate to the use of the unit as a residence, with not more than 25 percent of the total floor area, or 500 square feet, used for the home occupation. In this case, the petitioner uses the entire 896 square foot downstairs as the home daycare.

The child care home has been in operation here since 2007 and no complaints have been received during the current two-year approval of the variance. For this reason Staff recommends approval with a condition that someone residing in the home work at the daycare and that the daycare and home remain under the same ownership.

Petitioner Presentation:

Ana Salazar, 58205 Diener Drive, Goshen spoke on behalf of the petition. She stated she has been a provider for many years and lived at this address until her family outgrew the home and they moved to a larger house. She asked that this petition be granted.

Audience Comments:

Maria Gutierrez, 511 Ryegrass Court, Goshen spoke in support of the petition. She stated this is a good location and the hours of operation are convenient.

Christopher Ortega, 2803 S Main St, also spoke in support of the petition. He stated the hours and location are convenient. He has no complaints or concerns about the safety of the children here.

Mr. Friesen asked if there are any problems dropping off or picking up children.

Mr. Ortega replied no.

Alma Springer, 625 Amberwood Dr, Goshen also spoke in support of the petition. She stated this is a convenient location and she appreciates the care her child receives.

The public hearing was closed.

Staff Discussion:

Mr. Holtzinger questioned why condition number three of the Staff Report stated a building permit was required. Ms. Wiles replied this is standard language in the Staff Report and is used to vest the variance. She went on to say a building permit and zoning clearance form would not be required in this instance.

Mr. Holtzinger asked if the daycare can continue if the house is sold. Attorney Kolbus stated it can continue if it meets the two conditions.

Mr. Friesen commented that when this case was heard two years ago, there was a concern regarding traffic. He stated today's report indicates there is no problem with traffic and those that spoke in support of the petition agree traffic is not an issue.

Action:

A motion was made and seconded, Holtzinger/Merino, to find with the recommendations and conclusions of the Staff Analysis and approve 16-06UV with conditions two, three and four, and omitting condition number one and including the two commitments listed in the Staff Report. The motion passed unanimously by a vote of 3-0.

16-07UV – Mark & Jennifer Yoder and Miller Brother Builders request a use variance to expand a non-conforming use (two-family dwelling unit in a Residential R-1 zone) for an approximate 14 feet x 15 feet kitchen expansion for the primary dwelling unit. The subject property is generally located at 914 College Avenue and is zoned Residential R-1 District.

Staff Report:

Ms. Wiles explained this is a two-family dwelling unit in an R-1 zoning district. In 2009, the Planning Department became aware of a basement apartment on the subject property and because there is no record of the apartment, the property is non-conforming. Today's request is for the construction a 14 foot by 15 foot kitchen addition on the primary unit; the basement apartment will remain unchanged. Because this property is non-conforming, only day-to-day maintenance is permitted and a building addition goes beyond day-to-day maintenance. The proposed addition will meet all setbacks and lot coverage and is consistent with developmental patterns of the neighborhood. The subject property is connected to City sewer, but not City water. The petitioners have agreed to connect to City water as part of the proposed addition.

Five calls and/or emails were received in support of this request.

Petitioner Presentation:

Mark Yoder, 914 College Avenue spoke on behalf of the petition. He stated they have a small kitchen now and they would like to expand. The current kitchen would become a mud room and an existing deck will be removed to make room for the addition. He verified that they have a rental apartment in the basement that is registered and regularly inspected by the City.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Holtzinger stated for the record that he is a neighbor, living two houses away from this property, but he has no interest in the property. He stated the previous owner had trouble selling in the past because the kitchen was so small and this is what the market recommends.

Mr. Merino stated this is a large lot and the request seems appropriate.

Action:

A motion was made and seconded, Merino/Holtzinger, to find with the recommendations and conclusions of the Staff Analysis and approve 16-07UV with the three conditions listed in the Staff Report. The motion passed unanimously by a vote of 3-0.

16-10DV – David & Brenda Snyder request a developmental variance to permit a cargo trailer to be parked/stored in front of the home where trailers must be parked/stored behind the rear line of the primary structure. The subject property is generally located at 2202 Homeacres Drive and is zoned Residential R-1 District.

Staff Report:

Ms. Wiles explained this request is to permit a cargo trailer to be parked/stored in the driveway in front of the home, where the Zoning Ordinance requires trailers to be parked/stored behind the rear line of the primary structure. According to the petitioner, the trailer is used as storage for his mobile DJ business and due to the cost of the equipment; the petitioner would like to store the trailer at his home and not at an offsite facility. The petitioner states it is impossible to move the trailer behind the home due to the privacy fence and the trailer is too tall to be parked/stored inside the garage.

It appears from the City's approximate GIS records that there is room to move the cargo trailer beside the home, meeting the minimum five foot setback requirement, and staff would recommend this location as an alternative.

One email was received from the developer of Colonial Farms, indicating they never intended for storage in the driveway of a residence. He voiced opposition to the request.

Petitioner Presentation:

David Snyder, 2202 Homeacres Drive spoke on behalf of the petition. He stated that when he purchased the trailer, he was not aware of the City ordinance, but now that he is, he wants to comply. He stated he has nearly twenty thousand dollars worth of equipment in the trailer and it is generally on the property through the week and moving out on weekends. He stated that, if he is allowed to put a concrete pad beside his home, he is ready to do that. He asked for the Board's approval.

Ms. Wiles asked if Mr. Snyder is agreeable to the amended recommendation.

Mr. Snyder stated yes.

Mr. Holtzinger asked Mr. Snyder if the trees shown on the aerial in the Staff Report belong to him.

Mr. Snyder stated they belong to his neighbor.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Friesen stated provided the parking pad is installed, he agrees with Staff's recommendation.

Mr. Holtzinger pointed out allowing a trailer to be parked behind the front line of the property is consistent with previous Board decisions. He went on to say if the trees along the property line are removed, a privacy fence could be installed.

Ms. Wiles reminded the Board that condition number three requires an approved zoning clearance form, a dimensioned site sketch, and a parking surface that meets the Board of Works Design Standards and Specifications.

Mr. Merino pointed out the concrete pad is a good idea because it lets neighbors know open parking is not allowed in the front yard.

Action:

A motion was made and seconded, Holtzinger/Merino, to find with the recommendations and conclusions of the Staff Analysis and approve 16-10DV with the four conditions listed in the Staff Report. The motion passed unanimously by a vote of 3-0.

16-11DV – TNT Fireworks and Wal-Mart Stores request a developmental variance to permit outside sales and display of merchandise (fireworks) from June 23 to July 5, 2016 where outside sales and display of merchandise is not permitted. The subject property is generally located at 2304 Lincolnway East and is zoned Commercial B-4 District.

Staff Report:

Ms. Wiles explained this request is for permission to operate an outside tent in the Wal-Mart parking lot for the display and sale of fireworks for a 14 day period. Hours of operation are 9:00 am to 10:00 pm daily. The 800 square foot tent would block approximately ten parking spaces.

In 2014, the BZA approved a variance to permit this annual event for ten years, but corporate officials at Wal-Mart refused to sign the required multi-year commitment form, indicating they will only approve on a year-to-year basis.

This request was granted a variance in 2015 and Staff recommends approval of today's variance as well.

Petitioner Presentation:

Tommy Short, TNT Fireworks, 9539 Brightwell Drive, Indianapolis, IN spoke on behalf of the petition. He stated he has nothing to add, but is available to answer any questions.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

There was no discussion amongst the Board.

Action:

A motion was made and seconded, Merino/Holtzinger, to find with the recommendations and conclusions of the Staff Analysis and approve 16-11DV with the five conditions listed in the Staff Report. The motion passed unanimously by a vote of 3-0.

16-12DV – Maple City Health Care, ERI Consulting and DJ Construction request a developmental variance to permit a parking stall depth of 19 feet where 21 feet is required for five 60 degree spaces. The subject property is generally located at 213 Middlebury Street and is zoned Residential R-1 District.

Staff Report:

Ms. Wiles explained the packets contain information on the previously approved developmental and use variances, including an expanded use variance in 2015, which approved a 464 square foot building addition. At the time of the approval, a drainage plan was submitted and approved by the Board of Works (BOW), but the approved drainage plan was never constructed.

Today's request is to allow parking stall depth of 19 feet where 21 feet is required for five 60 degree parking spaces. This request is part of the plan to address the drainage issues on this section of the property. The petitioners also plan to reconstruct and expand the existing parking lot along Middlebury Street.

The Zoning Ordinance requires a stall width of nine feet, stall depth of 21 feet and a driving aisle width of 18 feet for 60 degree parking spaces. The proposed parking spaces would be nine feet in width and 18 feet in depth. The reduced stall depth is requested to maximize total onsite parking spaces.

Staff recommends approval of the variance with the commitment that any parking spaces that do not meet the required stall depth be marked as "Compact Car Only" or similar.

One call was received asking for clarification of this request.

Petitioner Presentation:

Mark Reinhard, 11020 Diebold Rd, Fort Wayne, spoke on behalf of the petition. He stated that his involvement began approximately one year ago when they discovered the dry well had failed, causing drainage issues in the west parking lot. Because the parking lot is basically being replaced, it was determined this would be a good time to maximize parking by expanding the lot. He noted they currently meet Zoning Ordinance requirements for number of parking spaces and the spaces on the west side of the lot would also meet the Zoning Ordinance requirements. The parking stalls on the east side would be two feet shorter in depth.

Mr. Friesen asked if any handicap parking is located here.

Mr. Reinhard stated that no handicap parking is located here because there is stair access to get to the building. He distributed photographs to the Board (*Exhibit 16-12DV #1*) showing what 60 degree parking spaces look like and explained how they compare to what is proposed for this case.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Ms. Wiles noted that a request for decreased parking stall depth was presented to the Board several months ago for the Boys and Girls Club, but it differed from this because their request was for reduced parking spaces for an approximate 80 space parking lot, and this request would have five spots marked as parking for "Compact Car Only." She noted Planning and Engineering both reviewed and felt this was a different case and one that Staff supports.

Action:

A motion was made and seconded, Holtzinger/Merino, to find with the recommendations and conclusions of the Staff Analysis and approve 16-12DV with the seven conditions and one commitment listed in the Staff Report. The motion passed unanimously by a vote of 3-0.

VI. Audience Items:
None

VII. Staff Board Items:
None

VIII. Adjournment: 4:43 pm Friesen

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Ardean Friesen, Chair

Kelly Huffman, Secretary