

Minutes - Goshen Board of Zoning Appeals
Tuesday, August 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, Kelly Huffman, Felipe Merino, and Ardean Friesen. Also present was Assistant City Planner Abby Wiles and Assistant City Attorney Jim Kolbus.

II. Approval of Minutes from 7/26/16: Holtzinger/Merino 5-0

III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Holtzinger/Manriquez 5-0

IV. Postponements/Withdrawals: None

V. Tabled Items (tabled from 7/26/16 BZA)

16-18DV & 16-12UV (public hearing) – Nathan Mateer Rempel & Sonya Mateer Rempel request use variances to allow a medical office (massage therapist) on the second story in a Residential R-1 zoning district where the use is conditional in the Commercial B-1 and PUD and permitted in the Commercial B-2, B-3 and B-4 zoning districts and to allow two wall signs (north and west elevations). The previously approved use variances permitted two residential dwelling units on the second floor and Commercial B-1 uses on the first floor. A developmental variance is also requested to allow nine onsite parking spaces where 22 spaces are required for a beauty salon, massage therapist office and a residential dwelling unit, not meeting the Zoning Ordinance requirements for parking stall depth and driving aisle width. The subject property is generally located at 701 S Main Street and is zoned Residential R-1 District.

Staff Report:

Ms. Wiles explained this request was tabled last month after a question was raised regarding parking spaces located in the public right-of-way along S 5th Street. A complaint had been received prior to last month's meeting from a neighbor stating the parking area in question was constructed to replace on-street parking that was removed as part of the 5th Street reconstruction and that it was to be used primarily for residents of S 5th Street. After Board discussion, it was decided to table the motion until more information could be obtained.

She stated she met with Mary Cripe in the Engineering Department and Mary stated that this parking area cannot be designated as parking for 5th Street residents only. Although employees, patrons and residents of the subject property may all use this area, they are encouraged to use their existing onsite parking spaces or park in public spaces closer to their building.

She noted one call was received from Jessica Johnston, asking what the determination was for the parking area. Ms. Johnston was at the previous meeting and voiced a concern regarding the parking.

Mr. Merino recused himself at 4:05 pm

Ms. Huffman asked for clarification regarding what neighbors had been told about the parking on 5th Street and whether or not it was for their use only.

Ms. Wiles stated that the parking was constructed to replace lost on-street parking and is considered public parking.

Open Public Hearing:

Nate Rempel, 410 Cross Street, Goshen, stated he had nothing to add and is here to answer any questions. Mr. Friesen asked if he had spoken with the beauty salon employees as discussed at last month's meeting. Mr. Rempel stated he spoke with the salon employees and they informed him four employees were using that parking area. He asked the salon to limit the number of employees that park there during the daytime to a maximum of two.

Jessica Johnston, 628 S 5th St, Goshen spoke in opposition to the request. She stated the parking was somewhat better following the previous meeting, but stressed that this is a residential area and not a commercial area.

Close public hearing.

Staff Discussion:

Mr. Holtzinger pointed out there are parking problems here now, and questioned if it is a good idea to approve this.

Mr. Friesen stated he feels parking would be approximately the same if this was a dwelling unit with two people living there or used as currently proposed.

Ms. Wiles concurred that required parking would be basically the same for either use although one might anticipate an additional volume of traffic with the proposed use.

Mr. Friesen questioned if it would be wise to return in two or three years for a new public hearing to ensure there are no problems.

Action:

A motion was made and seconded, Holtzinger/Huffman, to find with the recommendations and conclusions of the Staff Analysis and approve 16-18DV & 16-12UV with the following six conditions and five commitments:

Conditions:

1. An approved zoning clearance form is required before a Building permit can be issued for any renovations associated with the conversion of the residential unit to the massage therapist studio.
2. A completed zoning clearance form and artwork (with dimensions) of the wall and/or canopy sign(s) must be approved by the Planning Office.
3. 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.
4. Deviation from the requirements and conditions of the variance may result in the cancellation or termination of the approval or permit.
5. The BZA approval shall be effective when the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff and when all conditions of approval have been met.
6. No zoning clearance form will be issued until the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff and until all conditions of approval have been met.

Commitments:

1. The business owner of the massage therapist studio shall be the only employee. No additional employees are permitted.
2. One (1) non-illuminated, flush mounted wall sign on the north elevation is permitted, not exceeding six (6) square feet in area, no higher than seven feet from the sidewalk to the top of the sign.
3. One (1) non-illuminated, flush mounted wall sign or canopy sign on the west elevation is permitted, not exceeding eight (8) square feet in area.
4. The use variance to allow a medical office (massage therapist) on the second story in a Residential R-1 zoning district where the use is conditional in the Commercial B-1 and PUD and permitted in the Commercial B-2, B-3 and B-4 zoning districts and related developmental variances to allow nine onsite parking spaces where

22 spaces are required and to allow a wall sign on the north elevation are approved for a period of two (2) years from the date of the City of Goshen Board of Zoning Appeals approval; at which time it must be reheard by the City of Goshen Board of Zoning Appeals following a new application and a new public hearing.

5. The developmental variances to allow a wall sign on the west elevation and to allow parking spaces, not meeting the Zoning Ordinance requirements for parking stall depth and driving aisle width are approved permanently.

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

Mr. Merino rejoined the meeting at 4:16 pm.

Staff/Board Item: *6-month extension request for 16-03UV & 16-03DV (100 N 8th Street) from 8/23/16 to 2/23/17.*

Staff Report:

Ms. Wiles explained that at last month's meeting, the Board requested that the petitioner appear today to explain why an extension is requested. The petitioner is here today to explain.

Petitioner Presentation:

Itzia Salas, 67509 County Road 23, New Paris was present as translator for Ms. Esparza, 58724 Sun Valley Blvd, Goshen. She explained they are requesting an extension because the architect has been busy and has not filed this project with the State in time to get the State Release. She stated the architect has told them drawings will be ready to file with the state by next week.

Mr. Friesen stated when this request was originally approved, business hours were limited to 8:00 am to 5:00 pm daily and asked if that is still accurate.

Ms. Salas translated that if possible, Ms. Esparza would like to be open until 9:00 pm each Friday.

Ms Wiles stated that would require a separate public hearing with notices to neighboring property owners.

Mr. Friesen stated he wanted there to be a clear understanding of what the commitments are.

Mr. Merino stated it has been brought to the Board's attention that a request has been made for a liquor license. He stated that a liquor license was not mentioned at the previous hearing and feels this intent was not expressed to the Board at the hearing.

Ms. Salas translated that Ms. Esparza did not know there would be a problem if alcohol was offered on the menu.

Mr. Friesen asked if they still anticipate that most of their business will be carry-out.

Ms. Salas translated that Ms. Esparza anticipates both carry-out and dine in customers.

Mr. Friesen asked if they fully understand what changes need to be made in order for this to become an approved commercial kitchen.

Ms. Salas translated that Ms. Esparza understands.

Attorney Kolbus pointed out if this extension is not granted, the petition will lapse and a new petition will have to be filed.

Ms. Manriquez stated it was her understanding that most of the business was expected to be carry-out; Mr. Merino stated he thought that as well.

Mr. Friesen stated it was presented as a small area with maximum seating set at 28 people.

Mr. Merino stated he wants to be assured that what the Board was told, and what was approved, is what will happen. He wants assurances that the restaurant hours are observed and that they understand they will lose their permit if not. He also explained his comments in Spanish for Ms. Esparza.

Mr. Friesen stated if they want changes, it would have to come back to the Board for a new public hearing.

Ms. Salas stated they are aware of that.

Ms. Manriquez stated they did not indicate at the first hearing that they would be serving liquor and felt this is a concern in a residential neighborhood.

Mr. Merino pointed out this is also near the work release center and there are people there with alcohol issues.

Ms. Huffman commented that normally six-month extensions are automatically granted. She went on to say she is not surprised the architect is backed up because as a contractor she can verify that everyone is extremely busy.

She asked Attorney Kolbus if the Board is required to grant the extension if Board members feel the tone of this request has changed or if they have concerns.

Attorney Kolbus stated that if they feel it goes beyond what was represented, they do not have to grant the variance request. If the extension is denied, the variance lapses and they will have to come back to the Board for a new public hearing.

Mr. Friesen stated when the Board approved this, they felt this small location with seating for a limited number of people and daytime hours of operation, would not be disruptive to the neighborhood. He feels extended hours and the ability to purchase alcohol changes that. He agreed that serving alcohol in this neighborhood is a concern.

Mr. Holtzinger stated he is also concerned about the alcohol factor, and is willing to make a motion to deny the extension. He pointed out this is a small neighborhood and in the past the Board has been very careful about what type business is allowed to locate there.

Ms. Salas stated if the alcohol was not mentioned previously, it was because they had not decided if they were going to add it or if they would be able to obtain a liquor license.

Mr. Merino stated he was one of the first ones that wanted to help them out because he wanted to see a small family type business succeed. He stated it needs to be clear when someone comes before the Board that they explain what their intentions are and not make changes after their approval has been granted. He stated he would like to second Mr. Holtzinger's motion.

Action:

A motion was made and seconded Holtzinger/Merino to deny the six-month extension for 16-03UV & 16-03DV (100 N 8th Street). The motion passed unanimously by a vote of 5-0.

VI. Variances – public hearing items

16-20DV – Salvador Salazar and Arturo Salazar request developmental variances to allow a front yard setback (north) of approximately 16' where 30' is required along Clinton Street and to allow a front yard setback (west) of approximately 20' where 25' is required along Winter Avenue, for an open front porch. The subject property is generally located at 1218 W Clinton Street and is zoned Residential R-2 District.

Staff Report:

Ms. Wiles explained this request is for an open front porch with a 16 foot setback along Clinton Street where 30 feet is required and a 20 foot setback along Winter Avenue where 25 feet is required. Existing homes in this block along Clinton Street and on the same side of the street have setbacks ranging from approximately 20 to 25 feet. The proposed 16 or 17 foot setback will be closer than other homes along Clinton Street, but are not out of character with the area. The setback along Winter Avenue will match the existing setback of the home. All other developmental requirements will be met. Staff recommends approval of the request.

Petitioner Presentation:

Anna Rodriguez, translator for Salvador Salazar, 1218 W Clinton Street, spoke on behalf of the petition. She stated Mr. Salazar would like to make a porch in the front and rebuild a deck on the rear of the home. The deck at the rear was bad when he moved in and he removed it.

Ms. Wiles asked Ms. Rodriguez to remind Mr. Salazar that he only moved forward with the request to build the porch. She stated we will have to review the deck later.

Mr. Friesen asked if this porch will be enclosed.

Ms. Rodriguez translated that the porch will remain open and unenclosed.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

There was no discussion amongst Board members.

Action:

A motion was made and seconded, Huffman/Friesen, to find with the recommendations and conclusions of the Staff Analysis and approve 16-20DV with the three conditions listed in the Staff Report, adding a commitment that the porch must remain unenclosed. The motion passed unanimously by a vote of 5-0.

16-15UV – Angelica Perez and Maria Latisnere request a use variance to allow animal grooming (without pet boarding) in a Commercial B-1 zoning district where the use is permitted in the Commercial B-2, B-3 and B-4 zoning districts. The subject property is generally located at 512 Lincolnway East and is zoned Commercial B-1 District.

Staff Report:

Ms. Wiles explained this property is located across the street from Goshen High School on Lincolnway East. Today's request is to allow animal grooming in a Commercial B-1 zoning district where the use is not permitted. The subject property contains a small commercial building and while pet grooming is not permitted in the B-1, the use meets the intent of the B-1 in terms of size and location. The Planning Office has received several inquiries regarding this location in recent years and the proposed animal grooming is an appropriate use of the building and will complement existing land uses. Previous inquiries were for a retail clothing store, a snack shop and a cell phone sales/repair store.

Parking was evaluated and appears to be sufficient. Four spaces are required and two spaces are in front of the store with two additional spaces at the rear. There are also two parking spaces to the southeast of the building between 512 and 514 Lincolnway East which are used for the neighboring beauty salon and cannot be counted towards the overall onsite parking.

Staff recommends approval of the request as the proposed use meets the B-1 intent.

Petitioner Presentation:

Angelica Perez, 610 Noelwood was present on behalf of the property owner. She stated she has nothing to add.

Maria Latisnere, 604 Colorado Street, Goshen, spoke on behalf of the petitioner. She stated she is familiar with Staff recommendations and has nothing to add.

Audience Comments:

None

The public hearing was closed.

Staff Discussion:

There was no discussion amongst the Board members.

Action:

A motion was made and seconded, Merino/Holtzinger to find with the recommendations and conclusions of the Staff Analysis and approve 16-15UV with the three conditions listed in the Staff Analysis. The motion passed unanimously by a vote of 5-0.

16-16UV - Zachery N Tate and Leah M Schroeder request use variances to allow the expansion of the previously approved use variance (15-05 UV) for an approximate 384 square foot accessory building (with 336 square foot attached lean-to) for storage and equipment for the art school, and to allow a monument-style freestanding sign, approximately 16 square feet in area and 5 feet in height, where freestanding signs are not permitted in any residentially zoned districts, and developmental variances to allow the reconstruction of a previously demolished porch with a south (side) setback of approximately 20' where 35' is required along Madison Street and to allow the freestanding sign to be located in the vision clearance area and with a 1' setback along Madison and S 5th Streets, where 5' is required. The subject property is generally located at 324 S 5th Street and is zoned Residential R-1 District.

Staff Report:

Ms. Wiles explained a variance was granted in April 2015 by the BZA for an art school with reduced parking. Today's request is to allow the expansion of the previously approved use variance to include an accessory building for storage and equipment for the art school. An accessory building of 384 square feet and a 240 square foot overhang was approved administratively by Planning Staff and following meetings with the Building and Fire Inspectors, the Planning Office requested the petitioner obtain an expanded use variance to include the accessory building. The building will meet all developmental requirements.

A use variance is also requested for a freestanding sign approximately 16 square feet in area and five feet in height. The proposed sign's height and area is appropriate for the property and the petitioner has indicated the sign will meet the landscaping requirements.

Developmental variances are also requested today. The first is to allow the freestanding sign to be located in the vision clearance area and to allow a one foot setback along both S 5th Street and E Madison Street where five feet is required. The second developmental variance is to allow the reconstruction of the previously demolished porch with a front (south) setback of 20 feet where 35 feet is required along Madison Street. The porch will be constructed in the same footprint as the previous porch. The existing home has an existing south (front) setback of five feet and the porch will not decrease the existing setback.

Staff recommends approval of the use variances and the developmental variance to allow the south (front) setback of 20 feet along Madison Street. Staff recommends denial of the developmental variances to allow the freestanding sign to be located within the vision clearance area and for the setback of one foot where five feet is required.

Petitioner Presentation:

Jeffrey Schaffer, 3720 Oakridge Drive, Elkhart, spoke on behalf of the petition. He stated he and the property owner spoke prior to today's meeting and have agreed they would like to move the sign to north side of the front walk, as suggested by Staff and where it will be out of vision clearance area. It will meet all setbacks and a new site plan will be provided to the Planning Office. He stated they also concur with all Staff recommendations and their proposals, regarding the sign and outbuilding. He verified the sign will not be illuminated.

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 members.

Action:

A motion was made and seconded, Huffman/Holtzinger to find with the recommendations and conclusions of the Staff Analysis and approve 16-16UV & 16-21DV with the following conditions and commitments:

Conditions:

1. An approved zoning clearance form is required for all proposed improvements before a Building permit(s) is issued.
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 City of Goshen Board of Zoning Appeals approval shall be effective when the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals 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 Board of Zoning Appeals staff and until all conditions of approval have been met.

Commitments:

1. The freestanding sign shall be non-illuminated.
2. The freestanding sign must be setback five feet from the property line, must be out of the vision clearance triangle and a site plan must be submitted to the Zoning Office prior to approval.

The motion passed unanimously by a vote of 5-0.

16-17UV – Marilu Lopez and Carlos Maldonado request a use variance to allow a non-permanent food vendor in the Commercial B-2 zoning district where the use is conditional in the Commercial B-3 and B-4 zoning districts. The subject property is generally located at 124 W Jefferson Street and is zoned Commercial B-2 District.

Staff Report:

Ms. Wiles explained this property is the City parking lot immediately east and adjacent to the former County Seat Café. The owners of Los Primos have recently purchased this property and while renovations are made to the building, they are requesting permission to operate their food truck in the City parking lot. On August 1st, the BOW granted approval through April 1, 2017, for one space to operate in the public right-of-way on the east side of the building.

BZA approval is also required because, with the exception of First Fridays, non-permanent food vendors are not permitted in the Commercial B-2 District. The petitioners request permission to vend from 5:00 pm to 1:00 am on Friday and from 5:00 pm to 2:00 am on Saturdays. They will not vend any other day. The petitioners only request temporary approval through April 1, 2017 at which time they anticipate that the restaurant will be opened. Staff recommends temporary approval through April 1, 2017, consistent with the BOW approval and with the commitments noted in the Staff Analysis.

Petitioner Presentation:

Carlos Maldonado, 122 E Clinton Street, spoke on behalf of the petition. He stated this request is for Fridays and Saturdays only. Prep work will take place from 5:00 pm until 7:00 pm on those days, with Friday hours from 7:00 pm until 1:00 am and Saturday hours from 7:00 pm until 2:00 am. No generator will be used and the truck will be removed from the property at the end of each night.

Mr. Friesen asked if Mr. Maldonado is clear where the truck is permitted to be parked.

Mr. Maldonado stated yes.

Mr. Friesen asked if the deadline of April 1, 2017 is acceptable.

Mr. Maldonado responded it is.

Ms. Wiles clarified that this recommendation is for approval through April 1, 2017 and would not be eligible for a six-month extension.

Mr. Holtzinger questioned if they are vending from another location within Goshen.

Mr. Maldonado stated they currently vend from the parking lot adjacent to McDonald's on Elkhart Road, but they pay a fee to vend from there and felt if they vend from their own property, they could put that money towards renovations at the new restaurant.

Audience Comments:

Mayor Jeremy Stutsman, Goshen, spoke in support of this petition. He stated the Board of Works discussed this with the petitioner and stated they would consider an extension, depending on how construction was going at the time. He pointed out the BOW did not vote on extending, but they did discuss that an extension would be an option. Because construction season is very busy, he suggested Board members approve this request for one year and if necessary, the BOW can then approve an extension.

Ms. Wiles stated this was not advertised as temporary so allowing this for one year will not present a problem.

Dave Daugherty, Goshen Chamber of Commerce also spoke in support of the petition. He stated he would hate to see them get held up and be unable to open. He asked that the Board grant the request along with the extension.

The public hearing was closed.

Staff Discussion:

Mr. Friesen stated he is alright with granting approval for one year.

Action:

A motion was made and seconded, Friesen/Holtzinger, to find with the recommendations and conclusions of the Staff Analysis and approve 16-17UV with the following conditions and commitments:

Conditions:

1. Deviation from the requirements and conditions of the variance may result in the cancellation or termination of the approval or permit.
2. 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.
3. 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.

Commitments:

1. Approval is granted through August 22, 2017; at which time it must be reheard by the City of Goshen Board of Zoning Appeals following a new application and a new public hearing.
2. Approval is required from the Board of Works, as applicable.
3. Approval is granted for Los Primos' catering truck only. No other non-permanent food vendors are permitted on the Real Estate or in the parking lot located at 120 W Jefferson Street.
4. The catering truck is permitted to operate on Fridays from 5:00 pm to 1:00 am and Saturdays from 5:00 pm to 2:00 am.
5. During the hours permitted, the catering truck shall be parked in one space in the parking lot located at 120 W Jefferson Street.
6. The catering truck shall not be parked/stored on the Real Estate or the parking lot located at 120 W Jefferson Street, except for the hours permitted.
7. Power shall be supplied from the building at 124 W Jefferson. No generator is permitted.

The motion passed unanimously by a vote of 5-0.

16-22DV – Albert L Mitchell, Sr, and Desie Mae Mitchell request a developmental variance to allow a 10’ x 31’ driveway (open parking space) in the front yard with a one foot side (east) setback where five feet is required. The subject property is generally located at 518 River Avenue and is zoned Residential R-1 District.

Staff Report:

Ms. Wiles explained this request is for the construction of a driveway at the northeast corner of the property. A developmental variance is required to allow a new open parking space in the front yard setback and to permit a one foot (east) side setback where five feet is required. The petitioners currently have no onsite parking and therefore park across the street from their property. The driveway for the property located immediately east of the subject property was granted a variance in 1992 for a duplex with parking in the front yard setback included as part of the approval. Additionally, several properties along River Avenue have parking spaces located within the front yard setback. The petitioner will meet the BOW requirements for hard surface and Staff recommends approval of the request.

Petitioner Presentation:

Albert Mitchell, Sr., 518 River Avenue spoke on behalf of the petition. He explained he currently parks across the street and his vehicles have been hit by cars and snowplows. His vehicles have also been vandalized numerous times. He would like the opportunity to park closer to his house.

Ms. Wiles reiterated that front yard parking is not something the Planning Office generally supports, but in this case it is warranted because there is currently no onsite parking and the Zoning Ordinance requirements cannot be met.

Audience Comments:

Roger Nofziger, 2601 Berkey Avenue spoke in support of this request. He stated that he owns the adjacent property at 516 River Avenue and would like to see this request approved. He stated he does not have any concerns regarding the setback.

The public hearing was closed.

Staff Discussion:

There was no discussion amongst the Board members.

Action:

A motion was made and seconded, Huffman/Merino to find with the recommendations and conclusions of the Staff Analysis and approve 16-22DV with the five conditions listed in the Staff Analysis. The motion passed unanimously by a vote of 5-0.

16-18UV – St. John the Evangelist Catholic Church and Scott Signs request a use variance to add an electronic message center (EMC) to a non-conforming freestanding sign in the Historic District, where changes to non-conforming signs are not permitted, and EMC signs are not permitted. The subject property is generally located at 417 S Main Street and is zoned Residential R-3 District.

Staff Report:

Ms. Wiles explained two variances are requested to allow the addition of an electronic message center (EMC) to the existing freestanding sign and to permit an EMC in the Historic District (non-core). The petitioner indicates the existing sign is approximately 36-38 square feet in area, which exceeds the maximum permitted area of 32 square feet and thereby makes the existing sign non-conforming. The addition of an EMC to a non-conforming sign is not permitted. The petitioner’s proposal is to replace the sign panels and keep the same brick structure in

the same location. As proposed, the sign is approximately 33 square feet in area where 32 square feet is permitted. The EMC is approximately eight square feet of the total sign area.

The second variance is to permit an EMC in the Historic District where it is not a permitted use. There are no EMCs in the immediate surrounding area and because of this; Staff recommends denial of the variance. If the BZA chooses to approve the request, Staff recommends the illumination of the EMC be prohibited between 10:00 pm and 6:00 am and to prohibit all temporary signs and banners on the property.

She noted for the record that a request was received from Bill Davis for copies of the BZA application and Staff Report.

Petitioner Presentation:

Bill Scott, 600 E Jackson, spoke on behalf of the petition. He stated he was unsure where the original estimate of 36-38 square foot for the existing sign came from. He has determined the sign is actually 3.67 SF x 9 SF (33.03 SF). He referred to Section 4280.46.D of the Goshen Zoning Ordinance which states “Non-conforming signs which are within ten percent (10%) of compliance of any height, area or location requirement and which conform to all other provisions of this Section shall be considered conforming for purposes of these regulations.” He stated if they are allowed to use this, it should clarify things. He stated they are currently one foot over the maximum allowed and the size of the sign will not change.

Mr. Friesen asked if the EMC lettering will be white or if it will contain color.

Mr. Scott stated it will only be black and white as shown on the proposed artwork.

Mr. Friesen asked if the top portion of the sign is lighted.

Mr. Scott stated that yes; the top part is internally lit.

Ms. Wiles noted for the record that the sign is also at a zero foot setback where five feet is required so the sign area is not the only thing that makes the sign non-conforming.

Ms. Huffman asked if the intent is to use the same brickwork.

Mr. Scott stated that is correct.

Ms. Wiles pointed out that even if the 10 percent provision is allowed for the size of the sign, the setback is not within 10 percent so it would still need a variance.

Mr. Friesen stated if the Board was to grant this request, one of the recommendations is for the sign to be unlighted between the hours of 10:00 pm and 6:00 am and asked Mr. Scott if his clients would be agreeable to that.

Mr. Scott stated he thinks that is something they can work out.

Attorney Kolbus noted that if this is granted, there is a commitment that white only is permitted; no color will be allowed.

Mr. Merino stated that if this variance is granted it should be noted this is because it is for public use and a non-commercial purpose, in order to not set a precedent.

Audience Comments:

Dave Daugherty, Goshen Chamber of Commerce spoke in support of the petition. He stated he supports this request because he feels that churches are a special use, different from a store or bank. He went on to say they will use the existing frame and does not feel it will be much different from the existing sign.

Cindy Nichols, 424 S Main St, spoke in opposition to the petition. She stated she lives directly across the street from this church and this sign would have a direct impact on her home. She stated she does not feel this sign is a necessity and that it will be a distraction to traffic. She urged the Board to deny this request.

Ms. Huffman noted the proposed sign would be turned off between the hours of 10:00 pm and 6:00 am.
Ms. Nichols stated she is also concerned for drivers on the road.
Mr. Friesen pointed out the brightness of this sign will also be less than what is there currently.
Ms. Nichols stated she feels this is setting a dangerous precedent.

Judith Davis, no address provided, stated she is a parishioner at St. John's. She stated St. John's has an excellent communication program and does not feel there is a need for this sign. She went on to say she appreciates the care that is taken to protect the downtown district and can see how this might open the door to more signs.

Cindy Wiederman, 914 N Greene Road, spoke in support of this request. She stated she works in the office at St. John's and feels the current sign is not very functional. The proposed sign is not only for parishioner, but would also be used as an outreach for the community. She stated the sign will not flash and having it turned off between the hours of 10:00 pm and 6:00 am will not present a problem.

The public hearing was closed.

Staff Discussion:

Mr. Merino questioned if this can be limited so it is static.
Attorney Kolbus noted the Ordinance states it must remain static for a minimum of three (3) seconds and flashing is not permitted.

Ms. Huffman stated she feels this would improve the appearance of the downtown, noting old, yellow signs look outdated.

Reopen public hearing.

Mr. Friesen asked Mr. Scott to address how often the message on the sign would change.
Mr. Scott responded it probably changes every 10 to 15 seconds. He noted it will not scroll.

Reclose public hearing

Action:

A motion was made and seconded, Huffman/ Holtzinger to accept the findings of the Board and approve 16-18UV with the following five conditions and three 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 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 Board of Zoning Appeals 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 Board of Zoning Appeals staff and until all conditions of approval have been met.

Commitments:

1. Illumination of the electronic message center is not permitted between the hours of 10:00 pm and 6:00 am daily.
2. There shall be no temporary signs or banners on the Real Estate.
3. Any electronic message center sign message shall remain static and depicted for a minimum of fifteen (15) seconds before changing.

Ms. Huffman noted for the record, that the approval is granted because this church and school is a non-commercial entity; a public entity for public use. The motion passed unanimously by a vote of 5-0.

16-19UV – LaGrange Monument Works, JP Morgan Chase Bank, and FM Stone request a use variance to permit monument sales with outside display in the Commercial B-1 zoning district where the use is permitted in the Commercial B-3 District, and the Industrial M-1 and M-2 zoning districts. The subject property is generally located at 1719 Lincolnway East and is zoned Commercial B-1 District.

Staff Report:

Ms. Wiles explained this property was originally zoned Residential R-1 and in 1972, it was rezoned to Commercial B-1. The property served as a bank from the early 1970's until it became vacant. In the past year, the Planning Office has received several inquiries regarding permitted uses, including interest in an automobile dealership and gasoline service station, neither of which is a permitted use in the B-1 zoning district.

Today's request is to allow monument sales with outside display where the use is not permitted. The petitioner proposes outside display in the landscaped areas against the building along College Avenue, Dierdorff, and Lincolnway East. The total display area is approximately 800 square feet. The petitioner proposes no changes to the building or the site, although the drive-thru canopy may be removed at a later date. Parking has been determined to be sufficient and the petitioner has indicated they will meet the sign requirements for the freestanding and wall sign.

One call was received regarding the petition. The caller stated she would prefer inside sales only, but feels the monument sales with outside display is better than other proposals.

Staff recommends approval of the requested variance.

Petitioner Presentation:

Bill Eberhard, 115 S Detroit Street, LaGrange, spoke on behalf of the petition. He stated the Staff Report is basically consistent with the owner's business plan. He pointed out this is a low intensity use and the outside display of monuments will be close to the building and attract people to the inside showroom.

Mr. Friesen asked if there will be any external lighting.

Mr. Eberhard stated no external lighting is required.

Ms. Huffman asked how many monuments will be displayed outside.

Mr. Eberhard stated they anticipate between 12 and 20 monuments.

Ms. Huffman stated she is glad this site will not contain a car lot or service station, but this is a high traffic intersection, but she does not feel this use meets the Commercial B-1 intent.

Mr. Eberhard pointed out that because of the way this lot is configured, you will not see more than three or four monuments per side.

Ms. Huffman stated she feels there should be a limit of 12 monuments for outside display.

Mr. Eberhard stated they will be happy to work with 12.

Audience Comments:

Dave Daugherty, Goshen Chamber of Commerce spoke in support of this request. He stated he agrees with Staff's recommendations and feels this is a good use for the property. He also agreed that limiting outside display to 12 might be a good idea, noting this can remain a nice entry point into the City.

Mr. Friesen stated he would be in favor of four monuments per building side which would make a total of 16.

Ms. Huffman noted the petitioner is fine with limiting the monuments to 12.

Mr. Friesen questioned if they want to place monuments under the existing canopy.

Attorney Kolbus noted Staff could set the maximum at 12, unless the overhang is removed, then four more could be placed in that area, for a maximum of 16 monuments.

Mr. Eberhard stated he is in agreement with Attorney Kolbus' suggestion regarding an additional four monuments if the canopy is removed and they are willing to limit the monuments to 12 until the overhang has been removed.

The public hearing was closed.

Staff Discussion:

There was no discussion amongst the Board members.

Action:

A motion was made and seconded, Friesen/Holtzinger to find with the recommendations and conclusions of the Staff Analysis and approve 16-19UV with the following five conditions and four commitments:

Conditions:

1. An approved zoning clearance form is required for all improvements, including the freestanding and wall sign(s).
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 City of Goshen Board of Zoning Appeals approval shall be effective when the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals 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 Board of Zoning Appeals Staff and until all conditions of approval have been met.

Commitments:

1. This variance supersedes all previously approved variances.
2. Outside display is permitted only in the landscaped areas immediately adjacent to the existing building on the north, east and south as shown in Exhibit 1 and Exhibit 2 of the Grantors' application. No outside display is permitted in the driveway or any other location on the Real Estate.
3. One freestanding sign meeting the Commercial B-1 requirements is permitted with the approval.
4. The maximum number of monuments used for outside display is limited to 12 unless the canopy on the building is removed, then a maximum number of monuments may be increased to 16 with no more than four permitted per each side of the building.

The motion passed unanimously by a vote of 5-0.

16-23DV – Angela Nisley and Sunrise Builders request developmental variances to permit a zero foot front yard setback for a parking/driving aisle where 25 feet is required and open parking spaces in the front yard setback, for a 17' x 22' concrete pad. The subject property is generally located at 1462 Firestar Drive and is zoned Residential R-3 District.

Staff Report:

Ms. Wiles explained in March, 2016, the Planning Office approved plans for a new single-family home with a 24 foot wide garage and driveway leading to the garage. In July, 2016, the Planning Office inspected the property for a Certificate of Occupancy and noted an open concrete parking area had been installed in the front yard setback that was not shown on the approved site plan. When questioned, the builder explained the parking area was installed for a future third stall to the attached garage. Staff recommends approval of the variance with a commitment that the third stall of the garage be constructed within three years from the BZA approval.

Petitioner Presentation:

Angela Nisley, 1462 Firestar Drive, spoke on behalf of the petition. She stated that when she originally had plans drawn up for the house it included a three car garage; however, she chose to finish the basement instead of adding

the third stall. She was told by her builder that a concrete pad could be added so her children would not have to park on the street. She stated that she does not know how long she will live here and would prefer to have the approval without the requirement to build a garage within three years. Her concern is that if she sells her house, a new owner would be required to add an additional stall to the garage.

Audience Comments:

Tonya Detweiler, (no address provided) spoke to the petition. She stated that she is the developer of Maplewood Estates and is very interested in keeping vehicles off of the street. She stated their preference is to have cars parked in driveways and not along the street, which is reflected in their homeowner association covenants. She supports this variance request.

The public hearing was closed.

Staff Discussion:

Mr. Friesen asked if the third stall must be built if she sells the property.

Attorney Kolbus stated construction of the third stall would be part of a recorded commitment which stays with the land and is binding on future purchasers.

Mr. Friesen stated he prefers off-street parking, provided it does not encroach onto the sidewalk and that in this subdivision her only options are to park in her driveway or in the street.

Ms. Wiles pointed out they could have made a longer driveway and provided additional parking out of the front yard setback.

Action:

A motion was made and seconded, Friesen/Huffman, to find with the recommendations and conclusions of the Staff Analysis and approve 16-23DV with the following amended conditions:

1. An approved zoning clearance form and site plan is required before a Building permit is issued for the garage addition.
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 and termination of the approval or permit.

The motion passed by a vote of 4-1 (Friesen, yes; Huffman, yes; Holtzinger, yes; Manriquez, yes; Merino, no).

VII. Audience Items:

None

VIII. Staff Board Items:

- 6-month extension request for 16-04DV (714, 716, 718, 800, 828, 922 E Lincoln Avenue) from 8/23/16 to 2/23/17.

Ms. Wiles explained this extension is for the development in the floodway fringe for a detention basin and site improvements. Per Becky Hershberger in the Redevelopment Department, the design for this project is nearly complete and it is anticipated that it will be bid in October. This site is the former Ramirez Salvage property. Staff recommends approval of the request.

Ms. Manriquez recused herself at 6:13 pm.

Motion:

A motion was made and seconded, Huffman/Friesen, to approve the six-month extension for 16-04D from 8/23/16 to 2/23/17. The motion passed unanimously by a vote of 4-0.

IX. Adjournment: 6:15 pm Friesen/Huffman

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Ardean Friesen, Chair

Kelly Huffman, Secretary