

Minutes - Goshen Board of Zoning Appeals  
Tuesday, October 25, 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, and Felipe Merino. Also present was City Planner Rhonda Yoder and Assistant City Attorney Jim Kolbus. Absent: Ardean Friesen

**II.** Approval of Minutes from 9/27/16: Huffman/Manriquez 4-0

**III.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Huffman/Merino 4-0

**IV.** Postponements/Withdrawals: None

**V. Variances** – public hearing items

**16-21UV & 16-29DV** – Capstone II, LLC and Itzia Salas request use variances to allow a restaurant (not including drive-ins) in a 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 to allow two wall signs (east and west elevations) and a developmental variance to allow approximately 7 onsite parking spaces where 9 spaces are required. The subject property is generally located at 100 N 8th Street and is zoned Residential R-2 District.

*Staff Report:*

Ms. Yoder explained variances were previously approved for this site, but because they were not implemented within the required timeframe, they have expired and a new application was required. This is a commercial building in a residential district which has had several use variances over the years, with the current request for a restaurant. It is anticipated that the majority of the business will be carry-out, but there will be seating for approximately 30 customers. She noted the business hours and stated the petitioners have also applied for a liquor license. Also included in the variance is a request for two wall signs; one each on the east and west elevations. If approved, Staff recommends the signs be unlit and flush mounted. A variance is also requested to permit seven (7) parking spaces where nine (9) are required based upon the number of employees and amount of available seating. She noted for the record that if this is approved, the previous approval contained a recorded commitment which will need to be terminated as part of this approval. She outlined the criteria in the Staff report that are not met and noted that 24 notices were sent regarding this request. She stated she received two messages regarding this property, with the property manager at Mercer Manor Apartments raising parking concerns and an email from a member of the Chamberlain Neighborhood Association, expressing support of this request.

*Petitioner Presentation:*

Richard Schmucker, 53564 State Road 13, Middlebury, spoke on behalf of the petitioner. He stated he was not very involved with the first process, but has become involved now to make sure the project moves forward. He requested the hours of operation be expanded from the previous request, to allow the restaurant to be open from 7:00 am to 7:00 pm daily. This would allow the restaurant to be open during the breakfast or dinner hour if they find that's something they want to do, pointing out the previous approval was more restrictive. He noted Ms. Wiles recommended they include signage as part of their request. He explained Ms. Salas did not realize when she filed the initial application that if they wished to obtain a beer license, it would have to be included in the variance request.

*Audience Comments:*

Nate Mateer Rempel, 410 Cross Street, spoke in support of the petition. He stated while he cannot speak for the entire neighborhood association, the five member official body is in agreement that they would like to see this

restaurant approved. He stated this property has been underutilized for many years and feels this is a good fit for the neighborhood.

Jeremy Stutsman, 202 S 5<sup>th</sup> Street, also spoke in support of the petition. He stated there are a few commercial properties in residential neighborhoods and feels we need to do what we can to see that they are renovated and reused. He stated he contacted the Boys and Girls Club, LaCasa, and the Neighborhood Association and none of them have a problem with this proposed use. He went on to say none of them objected to beer and wine sales, provided the restaurant was not open late. He agreed the parking issue might be a concern, but feels it can be managed. He asked that the Board support this project.

Jose Elizalde, LaCasa, also spoke in support of the petition. He agreed with Mr. Rempel that this building has been vacant for a long time and would be happy to see a restaurant in the neighborhood.

Richard Schmucker stated he would like to address the parking lot concerns, noting they are agreeable to purchasing any signage that might be required in the area to distinguish the restaurant parking from the apartment complex's parking.

Joyce Fritz, Property Manager for Manor Apartments, spoke in opposition to the petition. She stated they currently have signs posted restricting parking, but people do not obey the signs. She noted they recently had the property surveyed and determined that one of the parking spaces along Bridge Street, which they thought was theirs, actually belongs to the property at 100 N 8<sup>th</sup> Street. Even with the additional parking space, she stated she does not feel there is adequate parking for a restaurant.

Mr. Holtzinger questioned if the hours of operation would help with the parking problems.

Ms. Fritz stated the only logical solution she sees is for a privacy fence to be installed.

Tammy Livingston, Manor Apartments, also spoke in opposition to the petition. She stated the kitchen area of this building would be right behind the apartments. She stated she is concerned about parking, but also has concerns regarding cooking smells and trash. She also questioned why a liquor license would be requested for a restaurant that anticipates the majority of the business will be carry-out, stating she does not feel this is appropriate in a residential neighborhood.

Glenda Galbreath, Apartment 13, Mercer Manor, also spoke in opposition to the petition. She stated this is a quiet neighborhood and has safety concerns if a restaurant opens here.

Mary Evans, Apartment 4, Mercer Manor, also spoke in opposition to the petition. She stated she is concerned about parking and safety of those in the neighborhood. She stated there is a small wire fence there now, but feels a tall fence between the parking lots and the homes would help with safety as well as privacy.

Nate Mateer Rempel clarified that his comments earlier regarding the Neighborhood Association's positive recommendation, does not represent the entire 700 households in the neighborhood. His comments were based upon discussion from the monthly meeting when the topic of the proposed restaurant was raised.

*Petitioner Rebuttal:*

Richard Schmucker stated he understands concerns regarding the parking, but the business hours are from 7:00 am to 7:00 pm and does not think safety will be an issue. He agreed that a fence between the parking lots might be a good idea.

Ms. Huffman asked that he address the concerns regarding smells from the restaurant kitchen.

Mr. Schmucker stated they would have to install the proper vent fan; one where the fan would blow up, not out onto a neighboring property.

Ms. Fritz stated there was a retaining wall on the property and until the property was surveyed recently, they did not know that the retaining wall belonged to the apartment complex. She stated when they did repair work to the wall, they found out that one of the parking spaces they thought belonged to them, actually belongs to the restaurant. She stated that is why she would like an eight (8) foot wall.

Ms. Yoder replied an eight foot wall in the parking lot would be located within the front yard setback and would also impede vision.

Mr. Schmucker questioned if concrete posts could be installed to keep cars from driving through the area. He also noted there will be six employees, but because they all live close by, they will likely walk or perhaps all ride to work together. He explained since the prior approval, plans have been submitted to the State, they have obtained their liquor license and have submitted the required paperwork to the City and the Elkhart County Health Department. Contractors are also lined up to begin work.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Merino stated he has concerns about the placement of the dumpster. He noted he feels it should be placed in the extra parking space in front and should be enclosed.

Ms. Yoder replied that it might not look the best in this location, but it might help delineate the parking. Board members discussed what height would be best for the enclosure around the dumpster.

Ms. Manriquez asked if any feedback was received from the Work Release Center.

Ms. Yoder responded she is not aware of any.

Attorney Shuler explained if the Board feels they need more information, they can table this matter to another month.

Ms. Huffman stated she feels the Board has enough information to make a decision today.

Mr. Merino pointed out the property owner is here today and that he was not part of the dialogue at the previous meeting. He would also like to know what the City inspectors have found.

Ms. Yoder responded that the packets contain two sheets of the building plans. She also noted while she was not part of the meeting, a meeting was held recently with City departments, the property owner, the business owner and the Health Department. She noted that one of the issues with the previous application was that there was not enough information understood by the business owner. That contributed to the delay in starting and she feels that has now been remedied.

Ms. Huffman pointed out the Building Department and Health Departments will not allow this to proceed without meeting the appropriate codes and work won't begin until the Board has granted approval for the project.

Ms. Yoder agreed with Ms. Huffman's comments, noting that everyone sat down together and discussed what the requirements are.

*Action:*

A motion was made and seconded, Merino/Huffman, to find with the recommendations and conclusions of the Staff Analysis, but finding Criterion 1, 2 and 4 are met, and approve 16-21UV & 16-29DV with the following conditions and commitments:

*Conditions:*

1. The BZA Result Letter/Commitment (2016-04192) for 16-03UV and 16-03DV is revoked and a termination of commitment form shall be executed and recorded.
2. An approved zoning clearance form is required before a Building permit is issued.
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. The proposed restaurant use must meet all Engineering, Fire, Utility, Building, and other applicable City requirements.
5. The proposed restaurant use must meet all applicable Elkhart County Health Department requirements.
6. Deviation from the requirements and conditions of the variance may result in the cancellation or termination of the approval or permit.
7. 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.
8. 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.

*Commitments:*

1. Hours of operation are limited to 7:00 am to 7:00 pm daily, Monday through Sunday.
2. Semi-truck deliveries to the Real Estate are prohibited.
3. Maximum seating capacity is limited to 30 persons.
4. One (1) non-illuminated, flush-mounted wall sign is permitted on the west elevation meeting the Commercial B-1 requirements, not exceeding 20% of the signable wall area of the façade.
5. One (1) non-illuminated, flush-mounted wall sign is permitted on the east elevation, not exceeding eight (8) square feet in area.
6. The dumpster shall be located in an enclosure four feet (4') in height, placed in the easternmost parking space adjacent to the apartment complex's parking lot.
7. An eight foot (8') fence shall be installed between the Real Estate and the apartment complex to the north, located behind the parking lot and building.

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

**16-30DV** – The City of Goshen Department of Redevelopment and LaCasa, Inc. request developmental variances to allow a rear (east) yard setback of 13' where 25' is required, to allow 39% lot coverage where a maximum of 35% is permitted, and to allow the variance to be valid for 18 months, for the development of a new single-family home. The subject property is generally located at 224 S 7<sup>th</sup> Street and is zoned Residential R-1 District.

*Staff Report:*

Ms. Yoder explained this vacant lot is located at the northeast corner of 7<sup>th</sup> Street and Jefferson Street, noting the previous six-unit home was destroyed by fire a few years ago. Today's request is to build a single family home, but, because of the small lot size, several variances are necessary. The home will meet the average setback along both Jefferson and 7<sup>th</sup> Streets. Variances are required for the rear setback and for lot coverage greater than 35%. The petitioner also requests the variance be valid for 18 months because this is part of a grant proposal and will be implemented over time. Staff recommends approval of the requested variances.

*Petitioner Presentation:*

Brad Hunsberger, 202 N Cottage Ave, spoke to the petition. He stated he is familiar with Staff recommendations and has nothing to add.

*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, Merino/Manriquez, to find with the recommendations and conclusions of the Staff Analysis and approve 16-30DV with the four conditions listed in the Staff Report. The motion passed unanimously by a vote of 4-0.

**16-22UV & 16-31DV** – Goshen Community Schools and Lehman & Lehman, Inc. request a use variance to allow the expansion of a non-conforming use (secondary high school bus parking lot) in an Industrial M-1 zoning district where the use is conditional in the Agricultural A-1, Residential R-1, R-1S, R-2, R-3, R-4 and PUD zoning districts and developmental variances to allow a front (west) yard setback of 6’ along Lincolnway East where 35’ is required and to allow a front (south) yard setback of 4’ along E Monroe Street where 35’ is required for the expansion of the bus parking lot. The subject property is generally located at 444 Lincolnway East and is zoned Industrial M-1 District.

*Staff Report:*

Ms. Yoder explained this request is before us because of the redesign and relocation of US33. The high school needs to relocate their bus parking lot, and in order to keep their existing baseball field and existing maintenance garage and parking the lot will be expanded to the east, along the north side of Monroe Street. A use variance is required to expand the non-conforming use and developmental variances are required for reduced setbacks along East Monroe Street and Lincolnway East. All required landscaping will be provided and Staff recommends approval of the requested variances. She noted for the record that condition number two of the Staff recommendations should be reworded to state “The variance shall become null and void unless a zoning clearance form has been issued and substantial progress has been made within six (6) months of the date of approval” as no building permit will be required.

*Petitioner Presentation:*

Mike Bultinck, Lehman and Lehman, 510 Lincolnway East, Mishawaka, spoke on behalf of the petitioner. He stated the only additional information he has to add is that during the technical review meeting, the Engineering Department requested the parking lot entrance be moved farther east to line up with 14<sup>th</sup> Street. He stated Goshen Community Schools has decided to do that. He noted this will help alleviate congestion at the US33 and Monroe Street intersection and allow busses to enter and exit easier.

Ms. Yoder noted this should not impact the request as the setbacks would remain the same and the landscaping adjusted.

*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/Merino, to find with the recommendations and conclusions of the Staff Analysis and approve 16-22UV & 16-31DV with the five conditions listed in the Staff Analysis, noting the correction to condition number two which requires a zoning clearance form to be obtained within six months. The motion passed unanimously by a vote of 4-0.

**16-23UV & 16-32DV** – Blue Diamond Communities, LLC and Interface Architecture & Design request a use variance to allow four assisted living, twelve-unit buildings (classified as nursing home per Goshen Zoning Ordinance), on three sites, to be located less than the required 1,000 feet from each other, and developmental variances as follows:

- Site A: Rear (south) yard primary building setback of 6’ where 25’ is required; one parking space per dwelling unit where 1.5 parking spaces per dwelling unit are required; and an alternate landscape plan in lieu of required partial landscaping adjacent to single-family land use;

- Site B: Rear (south) yard primary building setback of 6' where 25' is required; one parking space per dwelling unit where 1.5 parking spaces per dwelling unit are required; 12 dwelling units, where 11 are permitted per the density maximum of 20 per acre; and an alternate landscape plan in lieu of required partial landscaping adjacent to single-family land use.
- Site C: Rear (north) yard primary building setback of 6' where 25' is required; and one parking space per dwelling unit where 1.5 parking spaces per dwelling unit are required.

The subject property is located at:

Site A: Lot 21 in Maplewood Estates;

Site B: Lots 16B, 17A, 17B, 18A, and 18B in The Replat of Lots 2 through 8 inclusive, Lots 10 through 13 inclusive, Lots 15 through 19 inclusive, and Lots 22 through 36 inclusive in Maplewood Estates;

Site C: Lots 32A, 32B, 33A, 33B, 34A, and 34B in The Replat of Lots 2 through 8 inclusive, Lots 10 through 13 inclusive, Lots 15 through 19 inclusive, and Lots 22 through 36 inclusive in Maplewood Estates; generally located west of Northstone Road, south of Clover Creek Lane, with all lots zoned Residential R-3 District.

*Staff Report:*

Ms. Yoder explained this request contains three sites; one site will have two buildings and the remaining two sites will have one building each. Each site will contain the same building layout. These lots are zoned Residential R-3 which permits assisted living as a conditional use. In this case a use variance is necessary because they cannot meet the requirement of a 1,000 foot separation between the buildings. Developmental variances are also requested for the rear setback for each lot. She explained the rear setbacks for these lots are not adjacent to any other properties; noting the north setback is adjacent to a retention area and the south setback is adjacent to a ditch that runs along the north side of County Road 36. A parking variance is also requested for each site, to allow one parking space per dwelling unit where one and one-half is required by the Ordinance. It is anticipated that most of the residents will not drive and parking will likely be used for visitors and staff. Two of the lots (Site A and Site B) also require a variance for alternate landscaping where partial landscaping is required by the Ordinance. She explained that Site B on the south side of Autumn Blaze Lane has an easement on the east side where no landscaping will be allowed and the west side is narrow, with limited room for landscaping. This site also requires a variance for the density. Lot area would allow 11 units; 12 units are requested. Of concern is that Site B is small and will not allow adequate landscaping. She noted the solution is to shrink the building footprint with fewer units or to possibly add land to the site.

*Petitioner Presentation:*

Alan Ediger, 57190 Alpha Drive, Goshen, spoke on behalf of the petitioner. He stated the developer desires to bring senior care and housing into the neighborhoods. This allows people to age and stay within their communities in smaller homes and in a neighborhood environment. As pointed out by Staff, not many of the residents will drive and the homes are close together to fit the overall look of the neighborhood. He noted Site A has a NIPSCO and AT&T easement which runs north/south along the property, with the property line being in the center of the easement. He stated he has letters from both NIPSCO and AT&T giving them permission to plant minor vegetation, not medium or large trees, in the easement area and this is the reason for the alternate landscaping request.

Mr. Holtzinger asked the petitioner to address the variance request concerning the density of Site B.

Mr. Ediger stated the homes in this neighborhood are single family and duplexes. He pointed out the duplexes share a property line so they hesitate to take that land, in order to make that property more valuable in case they wish to build a duplex.

Ms. Huffman clarified the question here is if the Board requires them to meet the landscaping required by the Ordinance, is there more land available for purchase to allow for a smaller building?

Mr. Ediger stated this is acceptable as the final floor plans have not been determined. Their first steps were to get this request approved and they will follow up with floor plans, Health Department approvals and State approvals.

He stated he feels confident they will be able to reduce the square footage of the buildings, but the number of units would remain unchanged.

*Audience Comments:*

Dave Daugherty, 1101 Park Meadow, Goshen, spoke in support of this petition. He stated he has had an opportunity to look at this project and feels it will fit well within the neighborhood. He looks forward to this development.

Bob Shreiner, 1502 Harvest Drive, Goshen, also spoke to this petition. He stated he supports this request.

Forrest Miller, 1137 Park Meadows Drive, Goshen, also spoke in support of this petition. He stated he looks forward to this construction and feels it will fit well within the neighborhood.

Dawn Hicks, 1104 S 11<sup>th</sup> Street, Goshen, also spoke in support of the petition. She stated she will be moving to this neighborhood in May, 2017 and expressed excitement about this development. She supports the request.

Heidi King, 1529 Firestar Drive, also spoke in support of the petition. She stated she feels this is an exciting concept for Goshen and supports the request.

Robert Morris, 1416 Harvest Drive, Goshen, spoke in opposition to the request. He stated he's concerned about the reduced setback at the entrance to the subdivision and is concerned it will affect property values. His second concern is that adding these high-density buildings will increase traffic.

John Kantner, 1533 White Pine Court, Goshen, also spoke in opposition to the request. He stated he also has concerns regarding the setbacks.

Ms. Yoder explained there is no reduction in setbacks along Northstone Road or along any of the streets. In each case, the reduction is along the rear property lines and located either against retention areas or ditches. She also noted there will be no access from Northstone Road.

*The public hearing was closed.*

*Staff Discussion:*

There was no discussion amongst Board members.

*Action:*

A motion was made and seconded, Huffman/Manriquez, to find with the recommendations and conclusions of the Staff Analysis and approve 16-23UV & 16-32DV, except the portion of the variance for Site B to allow 12 dwelling units, where 11 are permitted, per the density maximum of 20 per acre, is not approved. The following conditions of approval shall apply:

1. The variance is granted for a period of six (6) months, and 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.
2. Deviation from the requirements and conditions of the variance automatically cancels and terminates the approval or permit.
3. An approved zoning clearance form is required before a Building permit is issued.
4. Site plan approval by Goshen City Engineering is required for site drainage, post construction, site utilities and right-of-way access, as applicable, before a zoning clearance/building permit is issued.
5. An alternate landscape plan, in lieu of the required partial landscaping, shall be approved for each site by the Planning Office.

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

VII. Audience Items:  
None

VIII. Staff Board Items:

- *6-month extension for 213 Middlebury Street (16-12DV) from 11/24/16 to 5/24/17*

Ms. Yoder explained this is for the lower parking lot along Middlebury Street, for Maple City Health Care Center. The six month extension is requested because they have had design issues.

*Motion:*

A motion was made and seconded, Holtzinger/Merino, to approve a six-month extension from 11/24/16 to 5/24/17 for 16-12DV, 213 Middlebury Street. The motion passed unanimously by a vote of 4-0.

IX. Adjournment: 5:38 pm

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