

Minutes - Goshen Board of Zoning Appeals  
Tuesday, March 28, 2017, 4:00 p.m.  
Council Chambers, 111 E. Jefferson Street  
Goshen, Indiana

- I.** The meeting was called to order with the following members present: Aracelia Manriquez, Richard Aguirre, Doug Nisley, Brad Hunsberger and Tom Holtzinger. Also present was Assistant City Planner Jon Hunsberger and Assistant City Attorney Jim Kolbus.
- II.** 2017 Board of Zoning Appeals Appointment
- *Brad Hunsberger – Appointed by the by Mayor - not a member of Plan Commission, appointed to replace Cathie Cripe 1/1/16 – 12/31/19*
- III.** Approval of Minutes from 2/28/17: Mr. Holtzinger pointed out one correction from the February minutes, noting that the motion for IX, page 8, was passed by a vote of 4-0, not 3-0 as reported. The motion was approved as amended, Aguirre/Manriquez 5-0.
- IV.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Hunsberger/Nisley 5-0
- V.** Postponements/Withdrawals: None
- VI. Variances – public hearing items**
- 17-08DV** – William J. Long and Choice Homes by Shawn Bornman request a developmental variance to permit a rear setback of 10 feet where 25 feet is required for the construction of a new single family home. The subject property is generally located at 1847 Park West Drive and is zoned Residential R-1 PUD District.

*Staff Report:*

Assistant Planner Hunsberger explained this request is for the construction of a new single-family home on a corner lot with an irregular shape. The Goshen Zoning Ordinance identifies the shorter of the two frontages as the front yard, with the opposite property line considered the rear lot line. In this case, the rear lot setback is 25'. A 10' utility easement is also located along the rear of the property and the petitioner would meet that 10' setback. Staff recommends approval of the request.

*Petitioner Presentation:*

Shawn Bornman, PO Box 12, New Paris, IN spoke on behalf of the petition. He stated this is a small lot and the City has requested the home face west, towards Janewood. By doing this, the backyard would face Park West and he doesn't feel that would be desirable. He would like to rotate the house to face Park West which would move the driveway farther away from the corner of Park West and Janewood and make the backyard larger.

*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, Nisley/Hunsberger, to find with the recommendations and conclusions of the Staff Analysis and approve 17-08DV with the three conditions listed in the Staff Analysis. The motion passed unanimously by a vote of 5-0.

**17-01AA & 17-05UV** – Heather Horst and Yoder, Ainlay, Ulmer & Buckingham request an appeal of the Zoning Administrator’s decision that a use variance is required to permit a Professional Office as a home occupation where the conditional use requirements have not be met for a massage therapy office, with onsite retail sales, with no onsite parking and where Professional Offices are conditional uses in the Commercial B-1 and PUD districts and a permitted use in the Commercial B-2, B-3 and B-4 Districts. If the appeal is denied, a use variance to allow a Professional Office as a Home Occupation is requested. The subject property is generally located at 1416 Wilson Avenue and is zoned Residential R-1 District.

*Staff Report:*

Assistant Planner Hunsberger explained these cases will be heard separately, beginning with 17-01AA.

He stated the petitioner has operated a home business for the past nine years and the Planning Office became aware after the Building Department was there to do an inspection for a separate matter. Keeping with Planning policy, a letter was sent to the homeowner about the possible violation. The petitioner responded quickly and follow up correspondence from the Planning Office, outlined requirements. The petitioner submitted the home occupation conditional use form for review by the zoning administrator and it was determined that several of the home occupation requirements were not met. Denial was based upon several reasons, including that the petitioner holds professional degrees, extra traffic to the neighborhood, the lack of required parking, and onsite retail sales. It was noted the Planning Office has no record of complaints.

*Petitioner Presentation:*

Lauren Maxson, Yoder, Ainlay, Ulmer and Buckingham spoke on behalf of the petitioner. She stated the Zoning Ordinance does not list or define particular types of occupations that can qualify for home occupations and there is no limitation on what type of occupations qualify as a home occupation. She stated Ms. Horst’s use of her home fits with the definition of Home Occupation as it is incidental and secondary to her use as a residence. She stated the professional office classification in the ordinance uses the plural description and therefore leads one to believe the professional office would be for multiple employees and multiple clients at any one time. She explained Ms. Horst is the only practitioner, she only allows one patient at a time, and all patients must have a scheduled appointment. Patients are scheduled so there is no overlap of patients coming and going at the same time. She stated its her determination that Ms. Horst’s use of her home meets the definition of Home Occupation.

Regarding the parking requirements, Ms. Maxson stated the four spaces required by the Home Occupation is dependent on the home being classified as a Professional Office. Since this is not a professional office, only two spaces are required, and she has two spaces available.

Regarding the onsite sales of product, Ms. Maxson pointed out that Ms. Horst focuses on providing holistic health and massage therapy to her clients. She does not advertise retail sales and pointed out that the supplemental sales that occur onsite are incidental to the massage therapy and do not cause additional traffic to the neighborhood.

Ms. Maxson requested the Board grant the appeal.

Mr. Aguirre asked if Ms. Maxson is aware of similar home businesses in Goshen.

Ms. Maxson stated she is not aware of any similar home businesses in the immediate area, but she is aware of businesses in the area, as well as a daycare nearby.

Mr. Nisley asked if Ms. Horst has been responsive to neighbor concerns.

Ms. Maxson stated that no complaints have been brought to Ms. Horst's attention.

Assistant Planner Hunsberger noted for the record that no negative comments were received by Staff and two email were received today supporting the request.

*Audience Comments:*

Dan Liechty, 1301 Wilson Avenue spoke in support of the petition. He stated he lives in the neighborhood and he has no concerns regarding the traffic. He also noted the exterior of the property is well maintained, unlike the nearby rental property.

Jerry Lapp, 212 Murray Street, also spoke in support of the petition. He stated he is a neighbor and a customer and confirmed that there are no overlapping appointments.

Pam Weishaupt, 916 Wilson Avenue, also spoke in support of the petition. She stated she is also a neighbor and client. She noted the property is well maintained and traffic is no concern.

Barb Bradbury, 1408 S Main Street, also spoke in support of the petition. She stated she was unaware of the home occupation until today. She stated when she received notice of the hearing, she thought this was a request for a new business and had concerns. Because this is an established business, and there has been no obvious increase in traffic, she supports the request.

Adam Scharf, 1631 ½ S Main Street, also spoke in support of the petition. He stated his parents live directly across the street and noted this is not a nuisance to the neighborhood. He questioned if this use falls under the definition of home occupation. He supports the request.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre questioned the limitations in the Ordinance regarding the definition of Professional Offices, noting the definition appears to be overly limited since some home professions could have fewer customer visits associated with them.

Assistant Planner Hunsberger stated this definition was decided upon by the City Council and voted into our current ordinance. He went on to say this might need to be addressed in due course and if this is something that the public would like to see changed, it would need to be recommended to the Plan Commission and the Plan Commission would make a recommendation to the Council as an ordinance. It would then be voted on by the Council and if approved, it would become part of the Zoning Ordinance.

Mr. Aguirre asked if the two available parking spaces in the driveway would be sufficient if her clients always used the driveway.

Assistant Planner Hunsberger stated if this use is classified as a Home Occupation and not a Professional Office, the parking requirement will be satisfied.

Mr. Holtzinger stated they have given variances over the years for different offices or home occupations, but once a use becomes large or noticeable, they need to find other locations for their business. He went on to say he feels Ms. Horst has all of the conditions to obtain the variance and variances have been granted for similar situations.

Mr. Nisley asked if a variance stays with the property and if so, can conditions be placed on the variance. Attorney Kolbus stated you cannot put a named person on the variance, but a time limit could be imposed. Mr. Nisley stated he has been by there several times and has never noticed a problem with parking. He stated he agrees with those that would like to see her get a permit for the home occupancy. He expressed no concerns regarding the retail sales.

Mr. Hunsberger asked if conditions can be placed upon this appeal or if they can only be placed on the use variance.

Attorney Kolbus stated conditions could only be placed on the use variance. He went on to say if the appeal is granted, it could be approved as represented here today by the petitioner.

*Action:*

A motion was made and seconded, Aguirre/Nisley, to accept the findings of the Board and overturn the Zoning Administrator's decision, and to approve the appeal as represented by the petitioner in her application materials and in her presentation at the public hearing. The motion passed unanimously by a vote of 5-0.

*Action:*

A motion was made and seconded, Nisley/Hunsberger to accept the withdraw of 17-05UV at the request of the petitioner. The motion passed unanimously by a vote of 5-0.

Mr. Aguirre asked Assistant Planner Hunsberger if it is appropriate for the BZA to make a recommendation to the City Council for a change to the Ordinance.

Attorney Kolbus stated the recommendation would need to be made with the Plan Commission who would appoint a committee to look at the issues.

**17-06UV** – Faith Mennonite Church requests a use variance to permit a Group Housing Quarters, with housing for a maximum of four (4) residents, in an R-1 zoning district where the use is conditional in the R-1S, R-3, and PUD Districts and permitted in the B-3 District. The subject property is generally located at 411 S 7<sup>th</sup> Street and is zoned Residential R-1 District.

*Staff Report:*

Assistant Planner Hunsberger explained this is a four bedroom home which would be used for short-term transitional housing for a maximum of four residents, which would include a host. He explained the zoning ordinance's definition of family and why this use is considered Group Housing Quarters. He explained Staff recommends denial of the request based upon findings of fact that cannot be confirmed.

*Petitioner Presentation:*

Deron Bergstresser, 1608 S 14<sup>th</sup> Street, spoke on behalf of the petitioner. He stated he is one of the pastor's for Faith Mennonite Church and stated their goals for the home. He explained they recently purchased this house and they would like to have a permanent host that would reside in the house. The host would be part of their congregation and act as a support person for the guests they invite into the home. He noted that they

presently intend to offer two of the bedrooms for short-term transitional housing. He explained the guests they offer housing to are generally individuals trying to save up for a security deposit, or they need an address to obtain a job, or while they wait for permanent housing. The house would be cared for by the congregation.

Mr. Holtzinger asked how the guests would be selected.

Mr. Bergstresser gave an overview of the selection process, noting that most of their guests will be referred and not walk-ins. There is certain criteria that must be met by the individual, including that they have some sort of plan for finding permanent housing for themselves. He also noted their guests need some sort of outside support.

Mr. Holtzinger asked if the host will provide therapeutic help to the guests.

Mr. Bergstresser stated the host will not be a therapist or social worker, but they expect those needing that type of service to have access outside of the home.

Mr. Aguirre asked what the maximum amount of time is that a guest can stay.

Mr. Bergstresser stated the maximum will vary, but would generally be approximately two to four months.

Mr. Hunsberger asked how the host position will work.

Mr. Bergstresser stated at this point, they plan to offer free rent to someone that wants to take on this position. They anticipate that a college student, seminary student, volunteer, or a member of the congregation that has the ability to do this, will be selected as the host. They hope to have a 12-month contract for the position.

*Audience Comments:*

Beth Bontrager, 414 S 6<sup>th</sup> Street spoke in support of the petition. She stated the church is a good neighbor and the house discussed here today has been vacant for at least the last year and was beginning to deteriorate. She is supportive of the church's plans for this house and is also on the selection committee for the church. She stated they want to have long-term hosts because it adds a sense of stability. There will also be a schedule for locking and unlocking the house. She asked for Board support of the request.

Mr. Nisley asked if this home will be open to both men and women.

Ms. Bontrager responded that it will.

Christine Guth, 406 S 7<sup>th</sup> Street, also spoke in support of the petition. She stated the church is a good neighbor and feels it will be an asset for the community. She asked that the Board approve this request.

Ben Beyeler, 502 S 7<sup>th</sup> Street, also spoke in support of the petition. He stated he does not anticipate any problems with parking or using this house as a group home. He also pointed out the church maintains their current property and expects this property will also be well taken care of.

Adam Scharf, 1631 ½ S Main Street, also spoke in support of the petition. He stated that he would like to point out that the definition of family in the zoning ordinance, addresses no more than two unrelated persons, exclusive of household servants. He stated he feels it is reasonable to suggest that the host in this case is in service to other people living in the house. He went on to say household servant is not defined in the zoning ordinance and feels that considering the host as a servant is on point in this case. He feels this group should be permitted to do this by right and that a variance should not be required for this use or for any additional parking.

Julia King, 312 River Vista Drive, also spoke in support of the petition. She stated she feels this is a well thought out model and is encouraged by the number of neighbors that have spoken out in favor of this request.

Myron Yoder, 418 S 6<sup>th</sup> Street, Goshen also spoke in support of the petition. He stated he knows individuals that have used the current housing offered by the church and has never noticed any problems or disruptions in the neighborhood. He stated he feels this program fills a big need in the area.

Rich Meyer, 114 S 5<sup>th</sup> Street, also spoke in support of the petition. He stated he would like to draw attention to the City's Comprehensive Plan that supports variety in housing options. He stated he is impressed with the transitional housing the church has provided over the years. He feels this use will be an asset to the community and supports the petition.

Zach Tate, 307 E Monroe Street, spoke in opposition to the petition. He stated he has no issue with the service the church wishes to provide, pointing out it is a great ministry. His concern is that this house could have been sold to a number of established families that have looked at the house and were interested in purchasing it.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre questioned if there is a housing shortage in Goshen.

Mr. Holtzinger stated this was a topic of discussion at a recent Chamber meeting.

Mr. Aguirre asked if transitional housing is also in short supply.

Assistant Planner, Hunsberger reminded Board members that a case was heard by the BZA last month regarding emergency transitional housing. He agreed that there is a need for this type of housing.

Mr. Holtzinger pointed out that the number of neighbors speaking in support of this request speaks volumes for the program.

*Action:*

A motion was made and seconded, Holtzinger/Aguirre, to adopt the findings of the Board after determining that items 3 and 4 of the Findings of Fact have been confirmed, and approve 17-06UV with the following conditions:

1. 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.
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.
4. All Building and Fire codes will be met, related to, but not limited to, occupancy on site.

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

**VII.** Audience Items:

None

**VIII.** Staff Board Items:

- 6-month extension from 4/25/17 to 10/25/17 for 16-22UV & 16-31DV – 444 Lincolnway East, Goshen Community Schools parking lot expansion

- 6-month extension from 4/25/17 to 10/25/17 for 16-23UV & 16-32DV – Maplewood Estates Group Care Homes

*Action:*

A motion was made and seconded, Hunsberger/Nisley, to grant six-month extensions for 16-22UV & 16-31DV – 444 Lincolnway East and 16-23UV & 16-32DV – Maplewood Estates Group Care Homes. The motion passed unanimously by a vote of 5-0.

Mr. Holtzinger stated that if Mr. Aguirre would like to make a motion for the Plan Commission to look into home based businesses, this would be the time to do so.

Assistant Planner Hunsberger stated a motion was made at the October 27, 2015 BZA meeting to ask the Plan Commission to look into allowing home based businesses as permitted use and/or special exceptions because of a growing trend in this area. He recommended the minutes and notes from the meeting be reviewed and feels the motion to proceed is appropriate.

*Action:*

A motion was made Aguirre/Hunsberger that pursuant to the previous recommendation and today's case, that the Plan Commission look into home based businesses. The motion passed unanimously by a vote of 5-0.

**IX.** Adjournment: 5:25 pm Nisley/Hunsberger

Respectfully Submitted:

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Lori Lipscomb, Recording Secretary

Approved By:

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Tom Holtzinger, Chair

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Richard R. Aguirre, Secretary