

Minutes - Goshen Board of Zoning Appeals
Tuesday, June 27, 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: Richard Aguirre, Doug Nisley, Brad Hunsberger and Tom Holtzinger. Also present was Assistant City Planner Jon Hunsberger and Assistant City Attorney Jim Kolbus. Absent: Aracelia Manriquez

II. Approval of Minutes from 5/23/17:

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

IV. Postponements/Withdrawals: None

V. Variances – public hearing items

17-10 DV – Granite Ridge Builders and Derald Raber request a developmental variance to allow a rear yard setback of 15.5 feet where 25 feet is required for the construction of a single-family home. The subject property is generally located at 1131 Van Gilst Drive and is zoned Residential R-1 District.

Staff Report:

Assistant Planner Hunsberger explained this request is to allow a reduced rear yard setback for the construction of a single-family house. This is a triangular lot located on the end of a cul-de-sac and presents a unique design challenge in order to build a home that would meet all of the setback requirements. Additionally a 15' utility easement is located along the rear of the lot. Staff recommends approval of the request.

Petitioner Presentation:

Patrick Martin, 1131 Van Gilst Drive spoke on behalf of the petitioner. He stated this request is necessary in order for the house to fit on this lot.

Mr. Holtzinger pointed out the site plan submitted with today's information indicate a patio that extends into a utility easement and asked if that is still planned. The petitioner stated that has been removed.

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, Aguirre/Hunsberger, to find with the recommendations and conclusions of the Staff Analysis and approve 17-10DV with the four conditions listed in the Staff Analysis. The motion passed unanimously by a vote of 4-0.

17-11DV – TNT Fireworks and Walmart Stores request a developmental variance to permit outside sales and display of merchandise (fireworks) from June 27, 2017 to July 5, 2017 where outside sales and display of merchandise is not permitted. The subject property is generally located at 2304 Lincolnway East and is zoned Commercial B-4 District.

Staff Report:

Assistant Planner Hunsberger explained this request is for an outside tent to be used for the display and sale of fireworks from June 27 to July 5, 2017. Hours of operation will be daily 10:00 am to 10:00 pm. The tent is approximately 800 SF and will block approximately 10 parking spaces. The B-4 zoning district does not permit outside display/sales of merchandise unless approval is granted by the BZA. This request has been approved previously in 2014, 2015 and 2016.

In 2014, the BZA granted a ten year approval which required a recorded commitment form, but Walmart corporate office would not approve a multi-year agreement, preferring instead to approve on a year-to-year basis. The terms of this year's request are the same as previous years. For these reasons, Staff recommends approval of the request.

Petitioner Presentation:

Tommy Short, Indianapolis, IN spoke on behalf of the petitioner. He stated he is familiar with the Staff recommendations and has nothing to add.

Mr. Nisley asked why Walmart does not agree to multiple years.

Mr. Short responded that this is just their corporate policy and that each store must reapply yearly.

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/Aguirre to find with the recommendations and conclusions of the Staff Analysis and approve 17-11DV with the four conditions listed in the Staff Analysis. The motion passed unanimously by a vote of 4-0.

17-08UV – Scott Van Gilst, Diana Estrada and Mario Garcia request a use variance to allow a Child Care Home where the home is not the legal residence of the provider and where the conditional use requirements cannot be met. A use variance granted June 23, 2015 required that the petitioner return in two years if the Child Care Home has not been relocated off of the real estate. The subject property is generally located at 427 N First Street and is zoned Residential R-1 District.

Staff Report:

Assistant Planner Hunsberger explained this residential home is located on North First Street. Land use and zoning for this, and all adjacent parcels, is residential single-family. On March 17, 2009, a conditional use permit was issued for a Child Care Home (Home Occupation) at 431 N 1st Street which is next door to the subject property. The petitioners, Diana Estrada and Mario Garcia have been operating a Discovery Learning Montessori Preschool at 431 N 1st since that time. In 2013 the petitioners began renting 427 N 1st

Street. According to the petitioners, the upper level of 427 N 1st Street is used by Diana Estrada's parents and a section of the main level is used for a daycare. Ms. Estrada states 427 N 1st has been used as a daycare since October, 2014. The Planning Office became aware of the use after receiving several complaints regarding children being taken back and forth between the two houses. He explained the conditional use requirements to the Board, noting that one of the requirements is that the home occupation must be conducted by the occupants living in the dwelling unit. As noted previously, the provider lives next door at 431 N 1st Street.

On June 23, 2015 a use variance was approved by the BZA for a two year period, for a Child Care Home at 427 N 1st Street. The intent of the 2015 approval was that a new location for the Child Care Home would be found at the end of the two year period and if not, it would have to come back to the BZA for a new hearing. He noted that to date, there has been no indication of a plan to relocate.

It was explained that 12 non-neighborhood persons spoke in favor of the petition at the 2015 meeting and one neighbor spoke in opposition. Additionally a City council member at the time spoke in opposition to the petition, noting she felt it was an important matter for those living and owning property there. During the Staff discussion at the meeting, a former BZA board member stated there were four longtime property owners that have gone on record as being opposed to this request.

Assistant Planner Hunsberger noted for the record that two public comments were received by the Planning office for today's proposal with one being in support of the request and one being in opposition. Staff recommends denial of the request.

Petitioner Presentation:

Diana Estrada, 431 N 1st Street, introduced Kelly Neff, 57465 Emerald Chase Lane, to speak on behalf of the petitioner. Ms. Neff read a letter from Diana Estrada which asked for a renewal of the variance for 427 N 1st Street. She stated she understands they are not present to demonstrate the quality of service that is provided, but felt it important to explain what it is they do. She explained they are a State licensed daycare and work with Paths to Quality, which is Indiana's Childcare Quality Program and Improvement System. She explained that the system validates childcare programs for ongoing efforts to achieve higher standards of quality. She further explained Paths to Quality has different levels of what is offered and gave a very brief description of each, noting that the Montessori school is a level 3. She explained that Ms. Estrada works with families from various socioeconomic backgrounds, including some children that are here because they receive Welfare vouchers. She outlined several reasons they feel a use variance should be granted. She explained future plans are for her husband and daughter to obtain an early childhood education degree and to be able to get a licensed center in an appropriate location. She asked that the variance be granted, but if denied, they request a period of three months in order for parents to make other arrangements for their children.

Attorney Kolbus stated at the original hearing there was an implication that they would relocate after two years. Based upon what was read today, there is no indication they plan to move, but that they want to make this permanent. He asked the petitioner if this is correct.

Ms. Estrada agreed that this is correct.

Mr. Holtzinger asked if they have made any effort to find a new location.

Ms. Estrada stated finding another place would only present the same problem. She stated her license is for a house and cannot be used in a commercial property. She stated having the two houses next door to each other is ideal for them and if she opens in another location it will not be her legal residence and the City requires she live in the house. This is the reason they have not looked for another location.

Attorney Kolbus clarified that if they relocate, they would have a similar situation.

Ms. Neff clarified the state license is for a home, but does not require the operator to also live in the home which puts it in conflict with City regulations.

Mr. Holtzinger questioned how many children are served by this operation.

Ms. Estrada stated they have 12 children.

Mr. Nisley asked if their state license is for a specific address.

Ms. Estrada explained that each house has a separate license.

Mr. Hunsberger questioned if a license is available for a commercial structure.

Ms. Estrada stated day care centers can be in commercial spaces; home daycares cannot.

Aaron Lehman, 2528 Redspire Blvd also spoke to this petition. He stated his son attends this daycare and stated that while a center is feasible, daycare centers in Goshen don't tend to be in the downtown area. He stated there are only two licensed day care homes in Goshen and they are less expensive than the day care centers. He noted that he went door-to-door in the 400 block of N First Street, speaking to twelve people. Of those twelve, eight signatures were received supporting the daycare, one person declined to sign because she was new to the neighborhood, and three stated they support daycare, but for various reasons do not support this daycare. He stated all parents of children attending the daycare also signed the petition.

Mr. Nisley asked how many of the persons signing the petition have children attending the daycare.

Mr. Lehman responded none of the First Street residents have children attending the daycare.

Mr. Hunsberger asked for clarification on the number of children.

Ms. Estrada stated it is 12 per house.

Mr. Nisley questioned how many employees there are.

Ms. Estrada stated there are five. That includes two in each house and herself.

Audience Comments:

Angie Garcia Estrada, 431 N First Street, spoke in support of the request. She stated she is the daughter of the owners and also an employee at the daycare. She explained that since this has become a daycare, the property has improved both inside and out. She stated that complaints about children being moved from house to house have been addressed. She pointed out that she and her father are both working towards a goal of receiving a degree in early childhood development. She stated they are not at a place where they're ready to expand.

The public hearing was closed.

Staff Discussion:

Mr. Hunsberger questioned if there are a maximum number of children allowed with the conditional use permit.

Assistant Planner Hunsberger responded the maximum number allowed under the conditional use permit is 16.

Mr. Holtzinger stated he was on the Board in 2015 when this request was first presented. He stated he was impressed by the quality of the program, but it was sold on the basis that at the end of the two year approval, they would do something else. He went on to say that was the reason he voted in favor of the request. He pointed out at the last meeting a long-time resident of the neighborhood was concerned about changes in the neighborhood. He stated this was presented to the Board as a two-year approval, but now the petitioner is back and wants this to be approved permanently. He stated he has a hard time approving this request.

Mr. Hunsberger noted it doesn't seem that finding another place was ever an option because of the licensing restrictions. It seems that was a false promise.

Attorney Kolbus stated there was no promise that they would relocate at the end of the two year approval, but they stated that was their intent. He stated he brought this up to make sure the Board understands this is no longer a temporary request.

Mr. Holtzinger pointed out this would only affect the house at 427 N First. The house at 431 N First meets all of the requirements.

Mr. Nisley questioned if there is a special insurance required for this business and if so, are both houses covered.

Ms. Estrada stated she has insurance for the house, but not for the business. She stated she holds a Level 3 license and when you obtain the Level 4 license you begin looking for business insurance.

Mr. Nisley asked if a child is covered now if they are injured on her property.

Ms. Estrada stated that no, they would not be covered.

Mr. Aguirre noted that in today's report it states that "the intent of the 2015 approval was that a new location for the child care home would be found by the end of the two year period". He questioned if this was the intent or if it was a condition of approval.

Attorney Kolbus stated that was the intent because they always have the right to reapply. He said it was his understanding that's why the Board expressed it that way; their intent was that they move on, but we cannot stop them from reapplying.

Mr. Aguirre asked if that can be a condition.

Attorney Kolbus stated no, that we cannot take that right away.

Mr. Holtzinger reiterated that he was at that meeting and he was sold on the basis of this being allowed for two years. He noted they were growing the business, were very successful and they intended to move on.

Mr. Nisley asked why the business has not been relocated.

Ms. Estrada stated she could find another house, but then she would have to come back to the BZA for another variance because it would not be her legal residence. She also explained that her husband and her daughter both need their early childhood diploma for them to relocate to another site for a child care center.

Mr. Nisley clarified that they do not have a license for a center.

Ms. Estrada stated that is correct.

Mr. Aguirre stated he is sympathetic because he realizes how difficult it is to find affordable, quality daycare.

Mr. Hunsberger stated there are more choices now than there were ten years ago.

Attorney Kolbus pointed out that below a certain number of children, they do not need a state license which means there may be more home daycares out there that we are not aware of.

Action:

A motion was made and seconded, Holtzinger/Nisley, to find with the recommendations and conclusions of the Staff Analysis and deny 17-08UV for reasons listed in the Staff Analysis. A roll call vote was requested with the following outcome: Nisley, yes; Hunsberger, no; Aguirre, no; Holtzinger, yes. The motion failed to pass by a vote of 2-2.

Attorney Kolbus called for a motion to table the request to the next meeting.

Action:

A motion was made and seconded, Hunsberger/Aguirre, to table 17-08UV to the next meeting. The motion passed by a vote of 3-1. (Nisley, no; Hunsberger, yes; Aguirre, yes; Holtzinger, yes.)

17-09UV – Jesus and Adala Delgado request a use variance to allow a variety store in an R-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 113 N 6th Street and is zoned Residential R-1 District.

Staff Report:

Assistant Planner Hunsberger explained this property contains a two-unit residential rental which is a non-conforming use, but allowed to continue with day-to-day maintenance only. An insurance office, a photographic studio and embroidery shop have all operated from this site over the years. In 2009 a request for a use variance was denied for a 12-seat restaurant, food delivery service and carry-out restaurant on the main floor of the property. The existing apartment was to remain upstairs. In 2010 a use variance was granted to allow a beauty shop at the rear of the home, with the remainder of the building to be used for single family residential use only. That variance was never implemented and has since expired.

Today's request is to permit Venecia's Jewelry & Perfume to relocate from their current East Washington Street storefront to the rear portion of this property. They anticipate a maximum of two employees at one time, with hours of operation Monday through Saturday from generally 12:00 noon to 7:00 pm. They will be closed on Sunday. Parking requirements will be met.

One public comment was received by the Planning Office requesting additional information on items being sold and pointing out nearby church property and associated parking.

Staff recommends approval of the requested variance.

Petitioner Presentation:

Carlos Delgado, 113 N 6th Street, Goshen spoke on behalf of the petitioner. He stated they have been located on East Washington Street for over ten years, but own the property at 113 N 6th Street and feel this would be a good use for the property. Their current site has some parking issues because they're located next to The Electric Brew and this site should alleviate some of those problems.

Audience Comments:

Adam Scharf, 1631 ½ S Main Street, spoke in support of the petition, noting that he currently owns 113 N 7th Street. He pointed out that because of the new road construction, the character of the neighborhood is changing and in the long term, he anticipates more commercial development.

Mr. Aguirre questioned if a different zoning could eventually be applied to that area and if so, what would it be.

Assistant Planner Hunsberger pointed out current zoning is Residential R-1. Previous zoning was Commercial B-4.

Attorney Kolbus pointed out the zoning was changed to R-1 before the road project began, but agreed the new road might change the character once again. He noted there is B-2 zoning to the west and B-1 to the north.

Tara Ammons, 110 N 6th Street, Goshen spoke to the petition. She stated she is confused how her property is zoned. She questioned if the area will become commercial.

Attorney Kolbus stated her property is currently zoned residential, but that may one day change.

Mr. Aguirre asked the petitioner if she has any thoughts regarding this variance request.

Ms. Ammons stated she was not aware the road would be going in and feels the neighborhood has changed. She wants to feel safe in her neighborhood and is unsure if this is where she wants to be with her children.

Petitioner Rebuttal:

Mr. Delgado stated he understands Ms. Ammon’s concerns, but from listening to her comments, he feels her main concern is the new roadway. He feels if this variance is approved, it will benefit the neighbors because they will add additional outside lighting.

The public hearing was closed.

Staff Discussion:

Mr. Aguirre questioned what type of signage would be permitted.

Assistant Planner Hunsberger stated the only permitted sign would be a non-illuminated sign on the west side, facing both their parking and the public parking. He also noted this property has had some sort of commercial use since the 1950’s.

Action:

A motion was made and seconded, Aguirre/Nisley, to find with the recommendations and conclusions of the Staff Analysis and approve 17-09UV with the four conditions listed in the Staff Analysis. The motion passed by a vote of 3-1. (Nisley, yes; Hunsberger, no; Aguirre, yes; Holtzinger, yes)

17-13DV – Supreme Corporation and Cardinal Point Surveying request developmental variances to permit Lot 2 of Horn Southeast Subdivision to have no frontage on a dedicated public street, where 70’ is required, and no direct access to a public or approved private street, where such access is required, and to permit Lots 1 and 4 to have a 0’ driving aisle setback for shared access, where a 5’ setback is required. The proposed Horn Southeast Subdivision is generally located on the north side of East Kercher Road, west of Horn Ditch, east of and including Supreme Court, containing ± 34.81 acres, parts of the Southeast Quarter and Southwest Quarter of Section 24, Township 36 North, Range 6 East, Elkhart Township and is zoned Industrial M-1 District.

Staff Report:

Assistant Planner Hunsberger explained this is a developed property, containing approximately 35 acres, with multiple buildings, located on multiple tax parcels. It has been under single ownership by Supreme Corporation and has been developed as a single zoning lot. The owner intends to retain Lot 1 which contains their corporate office with plans to sell or lease the remaining lots.

The Plan Commission cannot relax the zoning ordinance requirements for a subdivision to have no frontage on a dedicated public street and with no direct access to a public or approved private street for Lot 2. The BZA can relax these requirements thus allowing the Plan Commission to grant final subdivision approval. The request will also permit Lots 1 and 4 to have a zero (0’) foot driving aisle setback for shared access where five (5’) feet is required.

No public comments were received by the Planning Office and Staff recommends approval of the request.

Petitioner Presentation:

Philip Barker, 1002 Zollinger Road, Goshen, spoke on behalf of the petitioner. He stated the existing access for Lot 2 is currently located from a permanent right-of-way, granted to the county. The access will remain at that location. A cul-de-sac will be built at the north end of the existing Supreme Court which will become part of the existing easement.

Attorney Kolbus explained the cul-de-sac will clean up all of the right-of-way issues.

Mr. Aguirre questioned if the buildings will be used for similar businesses.

Mr. Barker stated they will be used for light industrial purposes.

Mr. Hunsberger asked why the road cannot extend farther north so the variance is not required.

Mr. Barker stated it is because of the way the property has been sold off.

Assistant Planner Hunsberger noted the property farther north is owned by the county and there is no room.

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/Holtzinger to find with the recommendations and conclusions of the Staff Analysis and approve 17-13DV with the four conditions listed in the Staff Analysis. The motion passed unanimously by a vote of 4-0.

VI. Audience Items:
None

VII. Staff Board Items:
None

VIII. Adjournment: 5:14 pm Aguirre/Hunsberger

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Tom Holtzinger, Chair

Richard R. Aguirre, Secretary