

Minutes - Goshen Board of Zoning Appeals
Tuesday, August 22, 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, Aracelia Manriquez, Doug Nisley, Brad Hunsberger and Tom Holtzinger. Also present was Assistant City Planner Jon Hunsberger and Assistant City Attorney Jim Kolbus.

II. Approval of Minutes from 7/25/17 & 8/1/17: Nisley/Aguirre 5-0

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

IV. Postponements/Withdrawals:

Assistant Planner Hunsberger stated that the petitioner for case number 17-15DV, which was tabled from the 7-25-17 meeting, has requested this petition be tabled to the 9-26-17 meeting due to ongoing discussion with the business owner.

Action:

A motion was made and seconded, Aguirre/Hunsberger to table 17-15DV to the September 26, 2017 BZA meeting. The motion passed unanimously by a vote of 5-0.

V. **VariANCES** – public hearing items

17-15DV – ***Tabled from 7-25-17*** 7-Eleven, Inc. and National Illumination & Sign Company request developmental variances to permit a new illuminated freestanding sign, with no illumination limitations, approximately 32 square feet in area and approximately 16 feet in height, with an electronic pricing panel, zero foot setback and no landscaping. This variance request was previously approved (16-01DV) and the sign illumination was limited to the hours between 6:00 am to 12:00 am. The variance was not implemented, has expired, and requires a new hearing. The subject property is generally located at 1000 S Main Street and is zoned Residential R-1 District.

**** Tabled to the September 26th meeting at the petitioner's request. ****

17-20DV – Elaine Jarrett Estate requests a developmental variance to remove the use restriction from variance 99-08DV to allow all Commercial B-3 uses. The subject property is generally located at 1303 & 1305 Lincolnway East and 1503 Fairfield Avenue and is zoned Commercial B-3 District.

Staff Report:

Assistant Planner Hunsberger explained a developmental variance was granted in 1999 to allow the expansion of an existing commercial building with access onto Fairfield Avenue, a local/residential street, and to allow parking within ten feet of the front lot line along Fairfield where 25 feet is required. Although the property is zoned Commercial B-3, the BZA approval limited the use of the proposed building addition to a secondhand shop only, requiring any other uses to return to the BZA for approval. The minutes from the 1999 meeting do not indicate why the uses were limited. No expansion is proposed for the subject property, but any future uses will need to be reviewed along with the current uses and associated parking requirements. Staff recommends approval of the request.

Petitioner Presentation:

Vicki Roeder, 64769 Maxwell's Gate, Goshen spoke on behalf of the petitioner. She stated she has a new tenant in this building and wants to make sure that there is flexibility on the use of this property. She said she does not understand why the restrictions were placed on the property and was unaware of it until a few weeks ago.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Hunsberger asked for clarification on the restrictions.

Assistant Planner Hunsberger explained the variance was to allow an addition to the building and when the variance was granted, a restriction was placed on it which limited the use to a consignment store.

Action:

A motion was made and seconded, Nisley/Hunsberger to find with the recommendations and conclusions of the Staff Analysis and approve 17-20DV with the two conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

17-21DV – Douglas & Angela Nisley and Stone Ridge Landscaping, Inc. request a developmental variance to allow a zero foot front yard (north) setback where 25' is required to allow one open parking space within the front yard where open parking spaces are prohibited within the front yard. The subject property is generally located at 404 River Vista Drive and is zoned Residential R-1 District.

Staff Report:

Assistant Planner Hunsberger explained this request is to allow a zero foot front (north) yard setback where 25' is required for one open parking space within the front yard setback. He noted that because of parking concerns on River Vista Drive, the addition of one parking space on private property would seem to be a reasonable benefit to the neighborhood. He also noted it is consistent with developmental patterns of the neighborhood. He pointed out this house was built after purchasing and combining two separate parcels. The two homes were demolished and a single family dwelling, meeting all zoning requirements when constructed. It is reasonable to believe the design could have included parking adjacent to the garage, out of the front yard setback, and out of any easements. For this reason, Staff recommends denial of the request.

Petitioner Presentation:

Josh Welker, Stone Ridge Landscaping, 1203 S 9th Street, Goshen spoke on behalf of the petitioner. He confirmed Assistant Planner Hunsberger's comments regarding the narrow street and that getting the vehicle off of the street would be a positive improvement for the neighborhood.

Mr. Holtzinger questioned if the new home construction could have been placed differently on the lot to allow parking to meet the required setbacks.

Mr. Welker stated the home was mostly constructed before they became involved. He and the clients have discussed the type of material to use for the parking space and they have decided on a turf stone paver which will have more of a grass appearance than normal.

Doug Nisley, 404 River Vista, also spoke to the petition. He stated they were going to have two additional spaces, one next to the driveway and one out front, but the parking space in front has been eliminated.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Holtzinger noted the Staff Report implied that others in the area have similar parking areas.

Assistant Planner Hunsberger stated there are six open parking spaces along River Vista with frontage less than the petitioner and seven open parking spaces on lots with frontage greater than today's petitioner. He went on to say he researched the properties with open parking spaces and found that none of them had received permission to create the parking spaces. Allowing this request would be consistent with the development of the neighborhood.

Mr. Aguirre asked if it's legal to park on the street.

Assistant Planner Hunsberger explained that street parking is permitted here.

Mr. Aguirre stated he frequently walks along this street and parking is very tight when cars are parked along both sides of the street.

Mr. Hunsberger questioned if a wider driveway could have been built.

Assistant Planner Hunsberger stated the maximum width allowed by the Engineering Department is 24 feet.

Action:

A motion was made and seconded, Holtzinger/Aguirre, to accept the findings of the Board by determining the petitioner can meet item three, and approve 17-21DV with the three conditions listed in the Staff Analysis. The motion passed unanimously by a vote of 5-0.

17-22DV – The Elkhart County Clubhouse requests a developmental variance for a zero foot side (north) setback where 5' is required for the construction of a 5' x 5' (25 sf) exterior stairway. The subject property is generally located at 114 S 5th Street and is zoned Commercial B-2 District.

Staff Report:

Assistant Planner Hunsberger explained this request is to allow a zero foot side yard setback for the construction of a 5' by 5' exterior stairway on the north side of the house, parallel to the alley. A stairway was located here previously, but it is unclear when it was removed. The new stairway would allow Clubhouse members to use an existing doorway that has not been used since the previous stairway was removed. He noted there will be reasonable separation between the stairway and any adjacent buildings, with an alley separating the stairway and the adjacent building to the north. The request is consistent with neighborhood standards and for these reasons, Staff recommends approval of the request.

Petitioner Presentation:

Erich Miller, 114 S 5th St, spoke on behalf of the petitioner. He stated this stairway will lead to a newly renovated area to be used as a new kitchen. He stated this will be used for convenience, but will also serve as an extra emergency exit. It will also improve the visual appeal of the building.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Aguirre asked if this reduced setback is typical for the area.

Assistant Planner Hunsberger stated this is not uncommon.

Mr. Hunsberger asked for clarification if this request is for the landing only or if it includes the steps.

Assistant Planner Hunsberger stated both are included in the variance request.

Action:

A motion was made and seconded, Hunsberger/Manriquez to find with the recommendations and conclusions of the Staff Analysis and approve 17-22DV with the three conditions listed in the Staff Analysis. The motion passed unanimously by a vote of 5-0.

VI. Audience Items:

None

VII. Staff Board Items:

Mr. Aguirre stated that he received a letter at his home, dated August 2, 2017 from the Legal Department. The subject was "Communication regarding matter before the Board of Zoning Appeals". He asked if this letter was in regards to a specific concern or complaint or if it was only a periodic reminder.

Assistant Planner Hunsberger stated from what he knows, it was only a periodic reminder. He said nothing specific has been brought to his attention, but there are new Board members and this is just a reminder to be cautious. He went on to say that all of the discussion about a petition happens at a public forum and this was just a reminder that no prior discussion is allowed.

Mr. Aguirre asked if this precludes them from site visits as part of their review.

Attorney Kolbus stated that site visits are permitted under the law and Board members are encouraged to do so.

Mr. Aguirre asked how Board members should handle questions if they are stopped during site visits or questioned prior to the meeting. He also asked if that should be disclosed at the meeting.

Attorney Kolbus explained they should cut the conversation short as soon as possible and ask the individual to bring the information to the Board. He also recommended that if this happens, the conversation should be mentioned at the meeting. He explained that different Boards have different rules and this is just a good reminder that BZA members cannot discuss cases prior to meetings.

Mr. Nisley stated he also received a letter and he spoke with Attorney Barkes. He was told there was no allegation towards anyone, and that this was only a reminder.

VIII. Adjournment: 4:31 pm Hunsberger/Aguirre

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Tom Holtzinger, Chair

Richard R. Aguirre, Secretary