

Minutes - Goshen Board of Zoning Appeals
Tuesday, March 27, 2018, 4:00 p.m.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

I. The meeting was called to order with the following members present: Doug Nisley, Richard Aguirre, 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 2/27/18: Aguirre/Hunsberger 4-0

III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Nisley/Hunsberger 4-0

IV. Postponements/Withdrawals: None

V. Variances – public hearing items

18-02UV – Brandon Miller and Jason Oswald request a use variance to allow a non-permanent food vendor (NPFV) in the Commercial B-2 District where the use is conditional in the B-3 and B-4 Districts, and to allow multiple food truck vendors to operate under the approval. The subject property is generally located at 227 S Main Street and is zoned Commercial B-2HD (Historic District).

Staff Report:

Assistant Planner Hunsberger explained this property is part of the downtown district, located on S Main Street and is unique in that the existing structure does not cover the entire lot. There is adequate space at the rear of the property for a food truck and outdoor dining. The gated area can still provide a means of egress if necessary.

Petitioner Presentation:

Brandon Miller, 712 Wilkinson, spoke on behalf of the petitioner. He stated there is space behind the Elephant Bar and they would like to utilize that area for outdoor seating, beer garden and a food truck. He stated the area is enclosed by a ten foot fence.

Mr. Holtzinger questioned how customers would access the area.

Mr. Miller stated customers will enter through the front door.

Mr. Holtzinger asked what hours the food truck would be on site.

Mr. Miller stated the food truck's hours would coincide with the Elephant Bar's hours of operation.

Mr. Nisley asked if this would only take place on Friday and Saturday.

Mr. Miller stated their intent is to begin with weekends and see what kind of interest there is. It would expand to other days if there is enough interest.

Mr. Nisley asked if the intention is for different trucks to be used.

Mr. Miller stated they hope to provide a variety and not have the same food truck each time.

Mr. Nisley voiced concerns that food trucks will compete with brick and mortar establishments. He asked if the Elephant Bar has an area where a kitchen could be installed.

Mr. Miller stated they currently do not have a kitchen and adding one now would be an added expense. Their preference is to utilize the empty space behind the building and provide various food trucks.

Mr. Nisley asked if the fire department is aware of this request and if they have approved.

Mr. Miller stated they have been on site to inspect and have approved the request.

Assistant Planner Hunsberger noted that Fire, Engineering, and Building departments have all been consulted and approved this request, provided all of the requirements are met. He also pointed out the food trucks will not use the Elephant Bar as a commissary. The food truck will only be parked there and have access to electricity while serving. Once they have finished serving, the truck will be removed from the premises.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Aguirre asked Assistant Planner Hunsberger for clarification on Staff's recommended condition number one which states "The variance is granted for a period of six (6) months, and shall become null and void unless at least one (1) non-permanent Food Vendor Permit has been issued within six (6) months of the date of approval."

Assistant Planner Hunsberger explained if the first non-permanent food vendor (NPFV) permit is not issued within six months, this shall become null and void, but noted it sounds like they already have someone lined up for this. He also pointed out that in order to become a NPFV in the City of Goshen, you are required to obtain a NPFV permit which is renewed annually.

Mr. Aguirre asked if the venue/business will have to come back here for approval at a later date.

Assistant Planner Hunsberger stated this approval is permanent.

Attorney Kolbus stated he agrees with Mr. Aguirre that the language for condition number one should be changed and suggested the following: "The variance shall become null and void unless at least one (1) non-permanent Food Vendor Permit has been issued within six (6) months of the date of approval."

Action:

A motion was made and seconded, Aguirre//Hunsberger to find with the recommendations and conclusions of the Staff Analysis and approve 18-02DV with the following five conditions and four commitments:

Conditions:

1. The variance shall become null and void unless at least one (1) Non-permanent Food Vendor Permit has been issued 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. The City of Goshen Board of Zoning Appeals approval shall be effective when the executed and recorded Results/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff.
4. No zoning clearance form or Non-permanent Food Vendor Permit will be issued until the executed and recorded Results/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff.
5. All signs, permanent and temporary, will be submitted to the Planning office for review and approval, following the Historic District requirements, Zoning Ordinance Section 4280.

Commitments:

1. The non-permanent food vendor use will serve customers of the primary use only, and will have all operation/activities inside the fence. Vending through or outside the fence is prohibited.
2. The non-permanent food vendor and customers shall not park in or block the alley located immediately west of the Real Estate.
3. Power for the non-permanent food vendor shall be run from the building on the Real Estate, not from generators.

4. Hours for the non-permanent food vendor on the Real Estate shall be limited to the hours of operation of the primary business on the Real Estate.

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

18-03UV – Red Tail Farm LLC and Adam Scharf request use variances to allow an event center (auditorium) where auditoriums are permitted in the B-2, B-3, M-1 and M-2 Districts, and to allow a tourist home with two sleeping rooms in the primary residence where tourist homes are permitted in the R-3, B-2 and B-3 Districts and as a conditional use in the R-1S District. A previous variance for the event center, 13-04UV, was approved for five years on 5/28/13. The subject property is generally located at 303 W Waverly Avenue and is zoned Agricultural A-1 District.

Staff Report:

Assistant Planner Hunsberger explained a use variance was granted by the BZA in May, 2013 to allow an event center and tourist home for the property known as Red Tail Farms, which hosts weddings and events in a barn located on the property. The approval for the event center required the petitioner to return in five years for a new public hearing. After consulting with City departments, the variance request has been submitted with some modifications.

Because the tourist home was never implemented, it requires a new public hearing. The petitioner hired a professional engineering firm to prepare a site plan with all of the information requested by City departments. A floor plan of the proposed tourist home was provided by the petitioner for the Board's review.

One change to the previous variance is to allow year-round events on holidays and weekends, rather than for certain months and limited number of days. No calls were received by the Planning Office regarding this request.

Petitioner Presentation:

Anna Wiebe and Adam Scharf, 1631 ½ S Main Street both spoke on behalf of the petitioner. Ms. Wiebe read the narrative provided to Board members. Mr. Scharf stated they read the Staff Report and reviewed the recommendations, but questioned the number of occupants that would be permitted for the proposed tourist home use. He pointed out that when the variance was granted in 2013, it was part of a long term goal and now that it is part of a short term goal, there have been significant changes in the plans for the tourist home. The maximum occupancy was set at 8 several years ago, but because of the changes, the addition is now 1600 sf. He would like the Board to reconsider Staff's recommendation of maximum occupancy for the tourist home.

Attorney Kolbus suggested commitment number two be changed to read: "Maximum occupancy for the tourist home and single-family use shall not exceed the legal occupancy as determined by the Building Department at the time other renovations are completed."

Mr. Scharf stated that would be satisfactory.

Assistant Planner Hunsberger stated Staff is aware of this concern and supports this change.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Holtzinger stated this appears to be a good location for this type of event center, noting the narrow road is not ideal.

Mr. Nisley asked if the Fire Department has concerns regarding the amount of traffic using the bridge.

Assistant Planner Hunsberger stated there is no issue here because they have met all of the Building and Fire codes.

Action:

A motion was made and seconded, Hunsberger/Nisley to find with the recommendations and conclusions of the Staff Analysis and approve 18-03UV with the following seven conditions and six commitments:

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. 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.
4. No zoning clearance form will be issued until the executed and recorded Results Letter/Commitment form has been returned to the City of Goshen BZA staff and until all conditions of approval have been met.
5. All Building and Fire Codes shall be met before any events are held on the Real Estate.
6. All uses on the Real Estate shall meet applicable Elkhart County codes before any events are held on the Real Estate.
7. The tourist home shall meet all applicable state, county or local laws and/or codes relating to bed and breakfast establishments before any guests are hosted.

Commitments:

1. This Commitment will replace Instrument # 2013-13811 (recorded Commitment Letter approved on May 28, 2013).
2. Maximum occupancy for the tourist home and single-family use shall not exceed the legal occupancy as determined by the Building Department at the time the renovations are completed.
3. Maximum occupancy for all events on the Real Estate shall not exceed 247 people.
4. The timing of events is limited to Friday through Sunday and holidays.
5. The single-family home/tourist home shall be owner occupied.
6. All applicable State, county and local codes shall be met

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

18-04DV – Micah Helmuth, Melanie Hertzler and Mervin Helmuth request a developmental variance to allow a 15' front yard (west) setback where 25' is required and a 3' side yard (south) setback where 5' is required for the construction of a 20' x 28' (560 sf) detached garage. The subject property is generally located at 519 S 3rd Street and is zoned Residential R-1 District.

Staff Report:

Assistant Planner Hunsberger explained this request is to allow a 15' front (rear) west setback where 25' is required for the construction of a detached garage along River Race Drive. Because this is a through lot, accessory setbacks for the rear follow the front yard setback requirements of 25'. The petitioner plans to

utilize the new curb-cut and approach installed by the City via the reconstruction of the alley into River Race Drive. Because the approach is offset to the south of the lot to avoid a utility pole at the rear of the property, a south setback of 3' where 5' is required, is also requested.

No calls were received concerning this request. Staff recommends a 20' setback along River Race Drive to meet current parking design standards of 9' x 20' for a parking stall and recommends approval of the 3' side yard (south) setback where 5' is required.

Petitioner Presentation:

Mervin Helmuth, 712 S 3rd Street, spoke on behalf of the petitioner. He explained he would like a 15' setback instead of 25' because there are 5 detached garages nearby and all have less than a 25' setback. He stated this is a driveway, not a parking area and while there might be short term parking there, a vehicle won't extend into the street. He also stated he would like more greenspace and less concrete which will allow more room for flowers and a garden. He asked that the Board approve the request.

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 accept the findings of the Board and approve 18-04DV 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 the BZA approval.
2. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.
3. An approved zoning clearance form is required

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

18-05DV – Tractor Supply Company and Danch, Harner & Associates request developmental variances for a proposed two-lot major commercial subdivision, Tractor Supply Company Major Subdivision, to allow a 0' side parking/driving aisle setback between Lots 1 and 2 for a shared driveway, where a 5' side setback is required, to allow access via an easement for Lot 2, where direct access to a public street or approved private street is required, and to allow a 7' rear parking/driving aisle setback for Lot 2 for a truck maneuvering lane, where a 10' rear setback is required. The proposed Tractor Supply Company Major Subdivision is generally located at 2323 Lincolnway East and is zoned Commercial B-3 District.

Staff Report:

Assistant Planner Hunsberger explained this variance request is subject to a proposed two-lot major commercial subdivision, creating a second lot for development at the current location of the Tractor Supply Company on Lincolnway East. The following variances are requested today:

- A zero foot side parking/driving aisle setback for a shared driveway between Lots 1 and 2 where a 5' side setback is required;
- Access via an easement for Lot 2, where direct access to a public street or approved private street is required;

- A 7' rear parking/driving aisle setback for Lot 2 for a truck maneuvering lane where a 10' rear setback is required

He explained that if this request is approved today, the variance will become null and void if a secondary subdivision is not submitted, approved and recorded. No calls were received regarding this petition and Staff recommends approval of the request.

Petitioner Presentation:

Greg Shearon, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, spoke on behalf of the petitioner. He stated Tractor Supply is dividing their current lot into two separate lots. They will maintain Lot 1 and Lot 2 is for a proposed Dollar Tree retail store. In order to provide access to the proposed Dollar Tree, shared access between the two will be required which also will require access to Lot 2 via an easement since there is no direct access. The last variance request is to allow a 7' rear (south) parking setback for Lot 2, where 10' is required. The extra 3' is required for the maneuvering of large trucks making deliveries to the Dollar Tree store.

Mr. Aguirre asked for an approximate timetable for construction of the new business.

Mr. Shearon responded they are finishing up plans so they can file for secondary subdivision approval and anticipate that will happen in the next month or two.

Mr. Aguirre asked if parking requirements are met.

Mr. Shearon replied that 22 spaces are required and 44 spaces will be provided.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Assistant Planner Hunsberger commented that Tractor Supply has done a good job finding a good use for this property and providing access and parking. It has been reviewed through the City's Technical Review process and the access easement was strongly recommended because we don't want to see more curb-cuts along Lincolnway East. Landscaping will be added and Staff feels this will be a good use for the property.

Mr. Aguirre asked if the signage has been approved.

Assistant Planner Hunsberger stated it has not been submitted, but anticipates having it soon.

Action:

A motion was made and seconded, Nisley/Hunsberger to find with the recommendations and conclusions of the Staff Analysis and approve 18-05DV with the two conditions listed in the Staff Report. The motion passed unanimously by a vote of 4-0.

18-06DV – Abonmarche Consultants, Inc., Jesus Perez-Esparsa and Angelica Zamora request developmental variances for site redevelopment including a building addition, new parking and relocated access, to allow:

1. Front building setback of 14 feet along Lincolnway East where 35 feet is required;
2. Open parking within the required 35' front setback along Lincolnway East and within the required 30' front setback along Sanders Avenue;
3. Front parking/driving aisle setback of 0 feet along Lincolnway East where 35 feet is required;
4. Front parking/driving aisle setback of 0 feet along Sanders Avenue where 25 feet is required;

5. Rear (north) parking/driving aisle setback of 0 feet where 10 feet is required;
6. Side (east) parking/driving aisle setback of 0 feet where 5 feet is required;
7. 16 parking spaces where 30 parking spaces are required;
8. No partial landscaping along the east and north property lines adjacent to residential land use due to the existing alleys and access locations for parking;
9. Primary access from an alley; and
10. Maneuvering within the public right-of-way of both alleys.

The subject property is generally located at 512-514 Lincolnway East and is zoned Commercial B-1 District.

Staff Report:

Assistant Planner Hunsberger explained this site is located on Lincolnway East, across the street from the Goshen High School football field. The site currently contains two small commercial buildings. The north building, which most recently housed a dog grooming shop, and a hair salon, currently located in the south building. The plan is to demolish the north building, expand the south building, redesign the parking area and add landscaping to create safer ingress/egress to the site. This is a small site and any development on this site will likely require multiple variances. Today's requested variances are:

1. Front building setback of 14 feet along Lincolnway East where 35 feet is required;
2. Open parking within the required 35' front setback along Lincolnway East and within the required 30' front setback along Sanders Avenue;
3. Front parking/driving aisle setback of 0 feet along Lincolnway East where 35 feet is required;
4. Front parking/driving aisle setback of 0 feet along Sanders Avenue where 25 feet is required;
5. Rear (north) parking/driving aisle setback of 0 feet where 10 feet is required;
6. Side (east) parking/driving aisle setback of 0 feet where 5 feet is required;
7. 16 parking spaces where 30 parking spaces are required;
8. No partial landscaping along the east and north property lines adjacent to residential land use due to the existing alleys and access locations for parking;
9. Primary access from an alley; and
10. Maneuvering within the public right-of-way of both alleys

This proposal has been reviewed by Planning, Engineering and Fire departments, through the City's Technical Review process and no calls were received by the Planning Office regarding this petition. Staff recommends approval of the requested variances.

Petitioner Presentation:

Greg Schrock, Abonmarche Consultants, Inc., 1009 S 9th Street, spoke on behalf of the petitioner. He stated they are requesting variances for the building, parking/driving aisles, and landscaping requirements. The plans include removing the building at 512 Lincolnway East and expanding the remaining building by 480 SF. All of the Lincolnway East access will be removed and the alley on the east and north sides will be used for new access. He explained removing the Lincolnway East access will allow for a more controlled traffic flow, creating a safer entrance and exit. He pointed out this has a favorable recommendation from Staff and asked that the Board grant approval.

Assistant Planner Hunsberger noted a letter from the Goshen Engineering Department, which includes a favorable recommendation, was included with the packets.

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/Holtzinger to find with the recommendations and conclusions of the Staff Analysis and approve 18-06DV with the three conditions listed in the Staff Report. The motion passed unanimously by a vote of 4-0.

VI. Audience Items:
None

VII. Staff Board Items:
• 6-month extension for 224 S 7th Street, 16-30DV

Assistant Planner Hunsberger explained LaCasa obtained developmental variances on 10/25/16 for 224 S 7th Street, for setbacks and lot coverage for a new single-family home on the property. Because this was part of a grant proposal, the variance was granted for a period of 18 months. Per Mr. Hunsberger's email request, he anticipates funding by this July.

Action:

A motion was made and seconded, Nisley/Aguirre, to grant a six month extension for 16-30DV, from 4/25/18 to 10/25/18. The motion passed unanimously by a vote of 3-0 (with one abstention).

VIII. Adjournment: 4:56 pm Aguirre/Hunsberger

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Tom Holtzinger, Chair

Richard Aguirre, Secretary