

Minutes - Goshen Board of Zoning Appeals  
Tuesday, May 22, 2018, 4:00 p.m.  
Council Chambers, 111 E. Jefferson Street  
Goshen, Indiana

*Assistant Planner Hunsberger introduced Angela McKenna who has been appointed to the Board of Zoning Appeals as both the Council and Mayoral alternate.*

**I.** The meeting was called to order with the following members present: Angela McKenna, Aracelia Manriquez, Richard Aguirre, Brad Hunsberger, and Tom Holtzinger. Also present was Assistant City Planner Jon Hunsberger and Assistant City Attorney Jim Kolbus.

**II.** Approval of Minutes from 4/24/18: Aguirre/Hunsberger 5-0

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

**IV.** Postponements/Withdrawals: None

**V. Variances** – public hearing items

**18-08DV** – Stephen and Verna Oyer request developmental variances to allow open parking in the front yard setback along New Street as part of a driveway expansion and a one foot side setback (south) where 5' is required for an 8' x 15' garage addition. The subject property is generally located at 219 N 2<sup>nd</sup> Street and is zoned Commercial B-1 District.

*Staff Report:*

Assistant Planner Hunsberger explained the first of today's request is for open parking in the front yard setback. This property is a through lot and setbacks for accessory structures on through lots follow the front yard setback requirements. The petitioner would like to expand the existing driveway along New Street and the proposed driveway would meet all other zoning requirements. The petitioner also asks for a 1' side yard setback to cover an existing concrete pad along the east side of a detached garage. This area would be used to store outside furniture and similar items. Staff recommends approval of both requests.

*Petitioner Presentation:*

Michael Oyer, 210 Island View Drive, spoke on behalf of the petitioner. He stated he is familiar with the Staff Report 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, Aguirre/Hunsberger to find with the recommendations and conclusions of the Staff Analysis and approve 18-08DV based upon the three conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**18-09DV** – Carl and Christina Weaver request a developmental variance to allow a two foot side (east) setback where five feet is required for the construction of an addition to a detached accessory structure. The subject property is generally located at 416 Marilyn Avenue and is zoned Residential R-1 District.

*Staff Report:*

Assistant Planner Hunsberger explained this request is for an addition to a detached garage, built in 1971 and where the side yard setback is established at 2'. This is a unique property because of a large utility easement along rear of the property, which limits available room for improvements. Staff feels the reduced side setback will not have an adverse impact on neighboring properties and recommends approval of the request.

*Petitioner Presentation:*

Carl Weaver, 416 Marilyn Ave, spoke on behalf of the petitioner. He stated this addition would be for a workshop and is available to answer any questions.

*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, McKenna/Aguirre to find with the recommendations and conclusions of the Staff Analysis and approve 18-09DV with the three conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**18-10DV** – Joel and Bess Daly request a developmental variance to allow the construction of a new single family dwelling without connection to City water where connection to City water is required. The subject property is generally located at 211 Egbert Road and is zoned Residential R-1 District.

*Staff Report:*

Assistant Planner Hunsberger explained there is an existing home on this 1.37 acre lot that will be demolished for the construction of a new single family home. All zoning requirements will be met with the exception of connection to City water. Goshen Engineering has confirmed that City water is not available to this property and at the present time, there are no plans to extend water. The Engineering Department supports the existing well as a reasonable exception to this requirement. Staff recommends approval of the request.

*Petitioner Presentation:*

Cody Miller, Wayne Street Builders, 410 Wayne Street, Middlebury, spoke on behalf of the petitioner. He stated he was familiar with the Staff Report and had nothing to add.

*Audience Comments:*

Larry Teghtmeyer, 204 Egbert Road, spoke to the request. He stated all of the homes along this street have private wells and he supports this request.

*The public hearing was closed.*

*Staff Discussion:*

There was no discussion amongst Board members.

*Action:*

A motion was made and seconded, Aguirre/Manriquez, to find with the recommendations and conclusions of the Staff Analysis and approve 18-10DV based upon the three conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**18-11DV** – Goshen Community School Corp. and Lehman and Lehman request a developmental variance to allow a 19' front parking/driving aisle setback along Plymouth Avenue where a 35' parking/driving aisle setback is required for a parking lot expansion. The subject property is generally located at 1216 S Indiana Avenue and is zoned Agricultural A-1 District.

*Staff Report:*

Assistant Planner Hunsberger explained this request is Phase 1 for Goshen Middle Schools parking plan. He explained this request became necessary because of an increase to the Plymouth Avenue INDOT right-of-way which reduced the setback of the planned parking for the middle school to below the required 35'. This request will provide an additional 38 parking spaces. Staff recommends approval of this request.

*Petitioner Presentation:*

Mike Bultinck, Lehman and Lehman, 510 Lincolnway East, Mishawaka, spoke on behalf of the petitioner. He stated the additional INDOT right-of-way caused the variance request.

Mr. Holtzinger asked if these are new parking spaces.

Mr. Bultinck stated this parking is north of what was built a few years ago when the pool was added. Parking will also be expanded near the football field during another phase.

Mr. Aguirre asked how many spaces will be added during the second phase.

Mr. Bultinck stated this phase will add 38 spaces, the lot to the east will add 54 spaces, and they're considering an expansion into the front yard which is currently on hold because the City is asking for additional right-of-way along Indiana Avenue. He went on to say they were also waiting for referendum results from the recent election because they might not need as much parking now.

Mr. Aguirre asked if a parking assessment has been done.

Mr. Bultinck stated part of their contract is to perform a feasibility study on the circulation and future parking for the site. He noted that as part of the changes along Indiana Avenue, that closing the entrance, approximately 150' south of intersection and moving it approximately 300' from the intersection, will impact internal circulation.

*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, McKenna/Aguirre to find with the recommendations and conclusions of the Staff Analysis and approve 18-11DV based upon the three conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**18-05UV** – Rod N Reel Coffee Inc. requests an amendment to use variance 15-24UV, granted October 27, 2015, to allow unlimited hours of operation, where 15-24 UV limits hours of operation to 6:00 am to 5:00 pm daily. Commitment 2016-06774 was recorded with the Elkhart County Recorder's office on April 15, 2016. The subject property is generally located at 707 Lincolnway East and is zoned Commercial B-1 District.

*Staff Report:*

Assistant Planner Hunsberger explained this request is to amend a use variance (15-24UV), granted October 27, 2015, which limited the hours of operation to 6:00 am to 5:00 pm daily. This request would allow unlimited hours of operation. The limited hours approved previously was based on neighborhood concerns that the use might become a drive-thru restaurant, but the final BZA approval limited the use to a Cabin Coffee Company franchise only. He noted that no calls have been received by the Planning Office regarding the coffee shop use. He also noted that Staff did not propose limiting the hours in the previous variance request because the ordinance does not generally regulate hours of operation for any business. Staff recommends approval of the requested variance.

*Petitioner Presentation:*

Mark Farver, 14933 Falcon Lane, spoke on behalf of the petitioner. He stated they are looking for more flexibility in their hour of operation.

Mr. Holtzinger asked if this would become a 24-hour coffee shop.

Mr. Farver stated they would like the opportunity to attract some of the RV traffic between 5:00pm and 6:00pm.

Mr. Holtzinger asked if it would be acceptable to allow the business to be open until midnight.

Mr. Farver stated they are also considering First Friday events and want the opportunity to expand their hours.

Mr. Holtzinger asked if they anticipate expanding their menu.

Mr. Farver stated there are no plans to add to their menu.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre asked why the hours of operation were limited by the previous variance.

Assistant Planner Hunsberger stated that neighbors were concerned about a drive-thru restaurant at this location and increased traffic and vehicles at night. Because of this, the BZA limited the use to the coffee shop and also restricted the hours of operation. He pointed out that Staff's recommendation of unlimited hours of operation remains.

*Action:*

A motion was made and seconded, Aguirre/Hunsberger to find with the recommendations and conclusions of the Staff Analysis and approve 18-05UV based upon the two conditions and two commitments listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**18-06UV** – Octavio & VanLendy Ramos request an amendment to use variance 02-08UV to add Specialty Shops, Upholstery Shops and Upholsterers to the list of permitted uses, where Specialty Shops, Upholstery Shops and Upholsterers is permitted in Commercial B-2, B-3 and B-4 Districts. The subject property is generally located at 511 E Jefferson Street and is zoned Residential R-1 District.

*Staff Report:*

Assistant Planner Hunsberger explained the building was designed and intended for commercial use and the proposed use by the petitioner is considered a light, commercial use. The building contains 256 sf of unused storage space which will be used for the upholstery business. This property is located in the middle of a residential district where neighborhood commercial uses are intended to serve the neighboring area. Onsite parking will be provided for both the commercial and residential uses. Staff recommends approval of the request to amend use variance 02-08UV to add Specialty Shops, Upholstery Shops and Upholsterers to the list of permitted uses.

*Petitioner Presentation:*

Octavio Ramos, 65828 State Road 15, spoke on behalf of the petitioner. He stated he works on furniture as a hobby and would like to use this building for storage of furniture and upholstery supplies.

Mr. Aguirre asked how often the parking lot is filled.

Mr. Ramos stated the lot has space for 16 cars and is never full. He also outlined plans to put an overhead door on the back to make it easier to load and unload furniture.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre asked for clarification on how long this has been a commercial use.

Assistant Planner Hunsberger stated it has been a commercial use for as far back as our records go. He pointed out there is a residence on the same zoning lot that is not attached to this commercial building, but the commercial building has been a commercial use since its existence.

*Action:*

A motion was made and seconded, Aguirre/Manriquez to find with the recommendations and conclusions of the Staff Analysis and approve 18-05UV based upon the four commitments listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**18-12DV** – Wallace S VanHook, III and Joetta A VanHook request a developmental variance to allow total detached accessory area of 1280 sf where a maximum of 1195 sf is permitted for the construction of a new 32' x 40' detached garage. The subject property is generally located at 319 S 9<sup>th</sup> Street and is zoned Residential R-1 District.

*Staff Report:*

Assistant Planner Hunsberger explained the ordinance states the total of all accessory buildings shall not exceed the footprint of the primary dwelling unit. He explained the primary residential footprint is 1,198 sf and the proposed 1,280 sf garage exceeds the maximum allowed by 7%. He explained an existing garage and shed will be removed for the new construction. Staff feels this property is not unique and therefore does not create the necessary argument to warrant a variance. He pointed out the garage could be built 3' less in width (32' x 37') for a 1,184 sf garage and be compliant with the zoning ordinance. He pointed out minimum parking spaces by City ordinance is 9' x 20' and the rear setback is propose at 9'. Goshen Engineering has confirmed that they will not issue a right-of-way permit for a building setback adjacent to an alley of less than 20' from the property line. Staff recommends denial of this request, but if approved, Staff recommends the rear setback be increased to 20' from the building foundation to the property line and that a signed right-of-way permit be obtained before the zoning clearance form is signed. Staff would also recommend that the driveway be constructed of durable hard surface to meet City standards.

*Petitioner Presentation:*

Wallace VanHook, 319 S 9<sup>th</sup> Street, spoke on behalf of the petitioner. He explained he was unaware of the 20' driveway requirement until he received Assistant Planner Hunsberger's Staff Report. He stated he had been told he only needed to have 5' around his property, so that is how he came up with measurements of 11' to the south, 5' to the north, and 9' to the alley. He stated he's only asking for 3' along one side. He noted that neighboring properties have less than the required 20' driveway and what he is proposing is in line with the existing neighborhood. He stated he feels this request is out of proportion. He went on to say he discovered the NIPSCO gasline runs through the middle of his backyard and he will have to pay NIPSCO to relocate the gasline along his fence. He also pointed out he cannot cover the gasline.

Mr. Holtzinger asked if the proposal includes removing two small garages.

Mr. VanHook stated an existing garage and carport will both be removed and replaced with a nice garage with a 1' overhang all around it.

Mr. Aguirre asked how close the existing garage is to the alley.

Mr. VanHook stated the closest one is approximately 12' or 13'.

Assistant Planner Hunsberger asked for clarification on where the measurements are from, noting that the property line does not extend to the edge of the alley pavement.

Mr. VanHook stated all of his measurements are from the edge of the alley pavement. He stated he did not know if the driveway would be concrete, but it would look nice. He stated he has boats and trucks and would like to store them inside the garage.

Mr. Holtzinger asked if he parks in front of his home.

Mr. VanHook stated his parking is in the front and he doesn't need parking in the rear.

Mr. Hunsberger asked for clarification on the location of the gas line.

Mr. VanHook stated the gas line runs from his meter, along the side of his house, then through the middle of his backyard, to the main located in the alley.

Mr. Hunsberger noted the gas line would need to be moved regardless of where the new garage is located.

Mr. VanHook agreed with Mr. Hunsberger's comment.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Hunsberger asked what options are regarding the Engineering requirement of a 20' driveway.

Assistant Planner Hunsberger commented that he feels part of their argument is that maneuvering is an issue, pointing out that backing into a garage located 9' from the alley could be a problem. He went on to say he did not want to speak on behalf of the Engineering Department, but they looked at the proposal and told him a driveway would need to meet the City standard which is a minimum 20' depth for a parking space.

Mr. Holtzinger noted a lot of garages don't meet this requirement.

Assistant Planner Hunsberger agreed, but pointed out this is new construction and should be built to City standards. He also explained that's the reasoning behind Staff's recommendation that this garage be less than 1,198 sf, so it is smaller than the primary dwelling. He explained that Staff feels we should not approve something that another department will not approve, which in this case is the size of the driveway.

Attorney Kolbus stated if the Board approves this request, the Board of Works (BOW) may be able to grant relief from the street standards. He went on to say he didn't know if the BOW would grant relief, but that should not stop the Board from taking action from a zoning standpoint. He noted the Board can take this into consideration, but they are not bound by it.

Mr. Hunsberger noted the Board could approve the size, but require that the garage be placed back 20'.

Assistant Planner Hunsberger stated he noted in his Staff Report that if the Board wanted to approve this request, they could do so with the condition that the garage be moved back on the property to meet the 20' setback requirement.

Mr. Hunsberger stated from personal experience he knows that 20' is pretty much the minimum to be able to make the corner into a 16' garage door with a pickup truck.

Mr. Aguirre asked if the applicant is agreeable to moving the garage back 20'.

Mr. VanHook stated this would take another 11' of his backyard and doesn't understand why this is required. He stated this is a congested area and if he's similar to other properties in his neighborhood, he feels his request is fair. He asked that the Board approve his request and allow him to work this out with Engineering.

Mr. Hunsberger pointed out Mr. VanHook touched on one of the reasons for the rule when he noted the current congestion. He noted the 20' rule would help alleviate the congestion.

Mr. VanHook stated they're only asking for a 9' wide driveway and doesn't understand how that will be beneficial.

Mr. Hunsberger stated the 20' length is so you don't infringe on your neighbor's property on the other side of the alley.

Mr. VanHook stated he drives a Ford F250 and he can turn in there with no problem. He pointed out if the neighbor behind him pulls into his yard it's ok, stating it's a mutual thing.

Mr. Aguirre stated if the Board approves this with the 20' condition, he will not be able to build if he cannot convince the Engineering Department to drop their requirement.

Mr. VanHook stated if they won't sign, he understands he will not be able to build. He stated we're not here to discuss the 20', but to discuss his request for 3'.

Mr. Hunsberger stated the developmental variance is for the size, not the setback.

Mr. VanHook stated he was told the setback was 5' and he went with 9' to make sure he had enough turning room.

Assistant Planner Hunsberger stated Mr. VanHook is correct that the minimum setback for an accessory structure at the rear of a property is 5'. He pointed out the difference in this case is that there is ingress/egress to this structure from the alley, which forces him to adjust the plans to accommodate other departments requirements.

Mr. VanHook stated he is not prepared to decide right now if he will build another 20' into his yard.

Mr. Holtzinger stated he feels the Board should grant the variance on the garage and he can decide how he's going to meet the other requirements.

Mr. Aguirre pointed out if this is approved and the Engineering Department does not lessen their requirement, they can't move forward.

Mr. Hunsberger pointed out the variance is for the size of the structure and the location on the lot is not part of this petition.

Ms. McKenna states she disagrees, noting he is so close to the standard that he would only have to reduce the size a small amount to meet the standard. She pointed out when there is new construction, that gives people the opportunity to meet the standard.

Mr. Holtzinger stated he feels two other sheds will be eliminated and the new construction will enhance the property even if it exceeds the allowable lot coverage.

Assistant Planner Hunsberger clarified this is not about lot coverage, but that the total accessory use exceeds the footprint of the home. He explained the Board would have to find something unique about the property that would warrant a variance, explaining that he was unable to find anything during his review.

Mr. Hunsberger asked if Staff had calculated lot coverage.

Assistant Planner Hunsberger stated they are fine on lot coverage and can meet the side setbacks. He noted while there are no other Planning issues, Engineering has stated they will not issue a driveway permit based on the submittal.

*Action:*

A motion was made and seconded, Hunsberger/McKenna to find with the recommendations and conclusions of the Staff Analysis and deny 18-12DV based upon the reasons listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**18-13DV** – TNT Fireworks and Wal-Mart Stores request a developmental variance to permit outside sales and display of merchandise (fireworks) from June 22, 2018 to July 5, 2018 where outside sales and display of merchandise is not permitted except by permission of the BZA for a limited time. The subject property is generally located at 2304 Lincolnway East and is zoned Commercial B-4 District.

*Staff Report:*

Assistant Planner Hunsberger explained the BZA approved a developmental variance on May 27, 2014 to permit the annual outside sale of fireworks from a tent in the parking lot. A commitment form was required and per

commitment #5, approval was granted for a period of 10 years. The commitment form was required to be signed and executed by Wal-Mart, but because Wal-Mart corporate does not support a multi-year agreement and refused to sign the commitment form, the applicant to reapply each year. In addition to being approved in 2014, a variance was also approved in 2015, 2016 and 2017. He noted that the terms of this request are identical to previous requests and Staff recommends approval.

*Petitioner Presentation:*

Tommy Short, TNT Fireworks, PO Box 80018, Indianapolis, spoke on behalf of the petitioner. He stated he was familiar with Staff's recommendation 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 the Board.

*Action:*

A motion was made and seconded, Hunsberger/Holtzinger to find with the recommendations and conclusions of the Staff Analysis and approve 18-13DV based upon the five conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**VI.** Audience Items:  
None

**VII.** Staff Board Items:  
Assistant Planner Hunsberger noted for the record that a residency form has been received from Angela McKenna.

Mr. Aguirre thanked Doug Nisley for his service to the BZA.

**VIII.** Adjournment: 5:05 pm Hunsberger/Aguirre

Respectfully Submitted:

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Lori Lipscomb, Recording Secretary

Approved By:

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Tom Holtzinger, Chair

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Richard Aguirre, Secretary