

Minutes - Goshen Board of Zoning Appeals
Tuesday, November 24, 2015, 4:00 p.m.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

- I.** The meeting was called to order with the following members present: Kelly Huffman, Nina Mishler, Aracelia Manriquez, and Ardean Friesen. Also present was Assistant City Planner Abby Wiles and Assistant City Attorney Jim Kolbus. Absent: Tom Holtzinger
- II.** Approval of Minutes from 10/27/15: Mishler/Manriquez 4-0
- III.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Mishler/Manriquez 4-0
- IV.** Postponements/Withdrawals: Ms. Wiles stated that case 15-26UV; 1000 S Main Street was withdrawn by the petitioner on November 19th. An amended request will likely be heard at the January 2016 meeting. She asked for a motion by the Board to accept the withdrawal.

Action:

A motion was made and seconded, Mishler/Manriquez, to accept the withdrawal of 15-26UV. The motion passed unanimously by a vote of 4-0.

Mr. Friesen explained to the audience the variance request for 1000 S Main Street has been withdrawn and if it is rescheduled for another meeting, new notices will be mailed to neighboring property owners.

V. Variances – public hearing items

15-38DV - Interra Credit Union and Professional Permits request a developmental variance to allow an internally illuminated wall sign on the south elevation where illumination of wall signs adjacent to a residential zoning district is not permitted. The subject property is generally located at 1501 College Avenue and is zoned Commercial B-4 District.

Staff Report:

Ms. Wiles explained this property is located within the Village of College Green Shopping Center. The petitioner requests a developmental variance to allow an internally illuminated wall sign on the south elevation, where illumination is not permitted adjacent to residential use or zoning. She noted the BZA has recently looked at two requests for illumination of wall signs adjacent to a residential use, in and around this same shopping center. An approval was granted in 2013 for the nearby Family Dollar store with a commitment that the sign is allowed to be lit daily, but only between the hours of 9:00 am and 9:00 pm. In April of this year, three wall signs were approved at the new Martin's Supermarket, with a commitment requiring the signs to be turned off between the hours of midnight and 6:00 am. Staff recommends denial of the request based upon the fact that this could be a potential nuisance to residents and wall signs are permitted without illumination, but if approved, Staff recommends a commitment that the sign shall be illuminated during business hours only.

Petitioner Presentation:

Douglas Merritt, 2319 Lincolnway East, Mishawaka spoke on behalf of the petition. He stated the proposed sign is consistent with the real estate. He pointed out the sign is internally lit and only the copy area of the sign face is illuminated; the body of the cabinet is not illuminated. He stated they agree with all the limitations imposed by Staff regarding business hours which will make this sign consistent with the signs at Family Dollar and Martin's.

Mr. Friesen noted the petition states the proposed sign will be on a timer and not illuminated during non-business hours and questioned what the hours of operation will be.

Mr. Merritt stated business hours are 8:30 am to 5:00 pm, but they would like to request an additional hour, both before and after business hours for security purposes. This will allow additional lighting for employees entering and exiting the work place.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Friesen stated the illumination on this sign appears to be fairly limited and because they have agreed to illuminate the sign only between the hours of 7:30 am and 6:00 pm, he would be in favor of granting this petition.

Attorney Kolbus noted the limited hours allowed for the sign's illumination would be a commitment.

Action:

A motion was made and seconded, Friesen/Huffman, to accept the findings of the Board and approve 15-38DV with the following five conditions and one commitment:

Conditions:

1. An approved zoning clearance form is required before a Building permit is issued.
2. 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 approval.
3. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.
4. The BZA approval shall be effective when the executed and recorded Results/Commitment form has been returned to the City of Goshen BZA staff and when all conditions of approval have been met.
5. No zoning clearance form will be issued until the executed and recorded Results/Commitment form has been returned to the City of Goshen BZA staff and until all conditions of approval have been met.

Commitment:

1. Illumination of the wall sign is only permitted between the hours of 7:30 am and 6:00 pm. The illumination must be turned off when the business is closed.

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

15-39DV – Interra Credit Union and Professional Permits request developmental variances to allow a 105 square foot wall sign where a maximum of 75 square feet is permitted on the northeast façade, to allow a wall sign to be placed at an overall height of approximately 34' where a maximum of 30' is permitted on the northeast facade; to allow a wall sign on the west façade to be placed at an overall height of approximately 51' where 30' is permitted on the west facade; and to allow a roof mounted sign located on the drive-thru canopy where roof mounted signs are prohibited in all zoning districts. The subject property is generally located at 300 W Lincoln Avenue and is zoned Commercial B-2 District.

Staff Report:

Ms. Wiles explained this property is located within the Historic District, at the intersection of West Lincoln Avenue and South Second Street. In September 2005, a developmental variance was granted to allow a second freestanding sign where one freestanding sign is permitted. The staff report indicates there is an existing 28 square foot sign with an electronic message center on West Lincoln Avenue and a 24 square foot freestanding sign with changeable copy.

Today's request is for four developmental variances. They include the following:

1. To allow a 105 SF wall sign where a maximum of 75 SF is permitted;
2. To allow a 105 SF wall sign at an overall height of 34 feet where 30 feet is permitted;
3. To allow a wall sign on the west facade at 51 feet where 30 feet is permitted;
4. To allow a roof-mounted sign on the drive-through canopy where roof-mounted signs are not permitted.

Ms. Wiles pointed out this is a large, modern building with substantial frontage on West Lincoln and Second Street and request number (1) to allow a 105 square foot wall sign where a maximum of 75 square feet is permitted is appropriate at this location. Staff recommends approval of this request.

Request (2) to allow the 105 square foot wall sign to be placed at an overall height of 34 feet where 30 feet is permitted would be placed on the window area on the northeast facade. Requiring the sign to be moved down approximately four feet would still allow it to be placed in the window area and the requirements of the Goshen Zoning Ordinance could be met. Staff recommends denial of this request.

Request (3) is for a wall sign on the west facade to be placed at an overall height of approximately 51 feet where 30 feet is permitted. The sign would be placed on the brick area above the windows on the west facade. Because of the window location, a wall sign on this facade could not meet the Goshen Zoning Ordinance requirements. For this reason, Staff recommends approval of this request.

Request (4) is to allow a roof-mounted sign on the drive-through canopy. The Goshen Zoning Ordinance does not permit roof-mounted signs in any zoning district and recommends denial of this request.

Ms. Wiles summarized her recommendations are for approval of variances one and three and denial of variances two and four.

She noted for the record that one call and one letter, both in opposition, were received regarding this request.

Petitioner Presentation:

Douglas Merritt, 2319 Lincolnway East, Mishawaka spoke on behalf of the petition. He stated that he has worked closely with Staff in his attempt to bring quality signage to this unique building. The goal is to convey the credit union's name and information in a consistent format, similar to the signage approved in the previous case. He stated because of the uniqueness of the building, they had to be creative with the mounting details and the installation. He stated there is a reason for variance (2) requesting a height of 34 feet where 30 feet is permitted on the northeast facade. That is because the sign will not be mounted to the glass, but will be mounted to the brick wall on either side. He noted there is a specific location at the 34 foot height that allows a straight line to the electrical which will prevent breaking into drywall and other internal aspects of the building. That will prevent any exposed conduit above or below the sign. If the sign is placed at 30 feet, conduit will run along the brick wall.

Regarding request (3), he noted placement is paramount on this building stating if the sign is not properly placed, there will be a great deal of expense and the possibility of having a sign no one is happy with. He explained the requested height of 51 feet is the optimum location for this sign.

Regarding sign (4), Mr. Merritt stated it is important to Interra Credit Union to have branding on the drive-thru canopy. He stated they do not want to mount the sign to the roof so they have designed a mounting system that attaches to the steel girder that supports the roof structure. He noted the top of the letters will not extend above the top of the roof line and argued the interpretation of the ordinance addresses a flat roof and this is a curved roof. He stated the only way Staff could review the sign was as a roof sign, but technically that's not what this is. The sign would be lifted to ensure a large box truck would not hit it.

Mr. Friesen asked if the sign on the west facade could be lowered to 41 feet questioning what hardships that would create.

Mr. Merritt stated they are looking at the scale and size of the building and trying to orient the sign to the left so it's closer to the roadway. He introduced Adam Gerstbauer to speak to this portion of the request.

Adam Gerstbauer, Burkhart Advertising, stated the conduit on this sign will go through a utility room at the top of the building which will give them access to a power supply. If this goes through the stairway, it will greatly increase the cost because it will require electric to be run through walls. At the proposed location it will go directly into the utility room and to an existing power supply.

Ms. Wiles asked the Board to carefully consider the request for the roof mounted sign, pointing out if it is considered a wall sign a variance would still be required because only one sign is allowed per frontage.

Mr. Friesen asked Ms. Wiles for the definition of roof mounted sign, which she read to the Board from the Zoning Ordinance.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Friesen stated he likes the signs and feels the explanation of why sign (2) is proposed at 34 feet where 30 feet is required makes sense. Based upon the architecture, he feels meeting the requirements would be a hardship and would be in favor of allowing this as presented by the petitioner. He stated while the roof sign is very tasteful, he agrees with Staff and is in favor of following the Staff's recommendations.

Action:

A motion was made and seconded, Mishler/Huffman, to find with the recommendations and conclusions of the Staff Analysis and approve developmental variances (1) to allow a 105 square foot wall sign where a maximum of 75 square feet is permitted on the northeast façade and (3) to allow a wall sign on the west façade to be placed at an overall height of approximately 51' where 30' is permitted on the west façade and **denial** of (2) to allow a wall sign to be placed at an overall height of approximately 34' where a maximum of 30' is permitted on the northeast façade and (4) to allow a roof mounted sign located on the drive-thru canopy where roof mounted signs are prohibited in all zoning districts for 15-39DV with the three conditions listed in the Staff Report.

A roll call vote was requested with the following outcome: Huffman, yes; Manriquez, yes; Mishler, yes; Friesen, no. The motion passed by a vote of 3-1.

15-40DV –M & H Rentals request developmental variance to allow substantial improvement, described as roof construction over an approximate 5,200 square foot section of an existing non-residential building (one story remaining after fire and demolition of top two floors), where the top of the lowest floor is not located a minimum of two feet above the base flood elevation. The subject property is generally located at 521 E Lincoln Avenue and is zoned Industrial M-1 District.

Staff Report:

Ms. Wiles explained this property is located on East Lincoln Avenue, with a section of the building located within the floodway. Improvements include two buildings. On April 28, 2015 a fire at the property caused significant damage to the front section of the larger building, while the smaller building at the rear of the property remained largely intact. The Flood Control District regulations state if a section of the building is located within the floodway, the entire building is subject to the Flood Control District Overlay regulations.

The Goshen Zoning Ordinance requires all structures in the Special Flood Hazard Area (SFHA) to be protected from flood damage below the flood protection grade (FPG). This regulation applies if a building is significantly damaged and the cost of restoration exceeds 50 percent of the market value of the structure, which according to the petitioner, this will. The zoning ordinance also requires that new construction or substantial improvements shall either have the entire lowest floor elevated to, or above, the FPG. The elevation certificate states the lowest floor is 792.51 feet and the BFE is 795 feet.

The petitioner requests permission to allow substantial improvement which includes a roof reconstruction over an approximate 5,200 square foot section of the building. One story would remain where the lowest floor is not located a minimum of two feet above the FPG. The petitioner also plans to add steel siding to the existing building.

This property has a long history of serving as an industrial use. While the front section of the building was significantly damaged by fire, the rear portion remains largely intact. Bringing the property into compliance with the Zoning Ordinance and floodplain requirements would be an exceptional hardship for the petitioner, as the entire building would have to be elevated between four and 4.5 feet.

Staff recommends approval of the requested variance.

Petitioner Presentation:

Michael Schmucker, 64570 County Road 19, Goshen spoke on behalf of the petition. He stated the fire in April, 2015 eliminated two stories of this building and they would like to add a roof over the remaining structure so they can continue to use it. They would also like to add steel siding over the brick to improve the look of the building. He stated he has a letter from DNR stating no permits are required from them. He explained this approval is the final requirement before they can obtain permits.

Audience Comments:

There was no one to speak to the petition.

Staff Discussion:

There was no discussion amongst the Board members.

The public hearing was closed.

Action:

A motion was made and seconded, Friesen/Manriquez, to find with the recommendations and conclusions of the Staff Analysis and approve 15-40DV with the seven conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

15-41DV – Penny Yarman requests a developmental variance to allow a rear (west) yard setback of 10 feet where 25 feet is required along River Race Drive for a new detached garage. The subject property is generally located at 511 S 3rd Street and is zoned Residential R-1 District.

Staff Report:

Ms. Wiles explained this request is to allow a front (west) setback of ten feet where 25 feet is required along River Race Drive for a new detached two-stall garage. This property fronts South 3rd Street and until recently an alley was located at the rear of the property. That alley has since become River Race Drive, and serves as the primary access for the Millrace Townhomes. Because of this, the property is now considered a through lot and has two front yard setbacks.

The proposed garage would be approximately 17.5 feet from the edge of the curb and comments from Goshen Engineering require a minimum of 20 feet, with a preference of 22 feet from the curb to the garage. This would allow a vehicle to be parked in the driveway without encroaching into the roadway. If the garage were located 22 feet from the curb, the setback would be approximately 15 feet from the property line where 25 feet is required.

The property is approximately 165.7 feet in length with more than sufficient area to accommodate the required 25 foot setback. Because there is sufficient area to meet the required 25 foot west setback, Staff recommends denial of the request.

Petitioner Presentation:

Penny Yarman, 511 S 3rd Street, spoke on behalf of the petition. She stated while this lot is 165 feet in length, it is narrow at only 33 feet in width. She would like to build a garage on her property, but does not want a third of her backyard to consist of concrete. She stated meeting the 25 foot setback, would require 32 feet of concrete. She stated she would be agreeable to a 20 foot setback and would have plenty of room to park her mid-size pickup truck. She pointed out while there are no garages on either side of her, there are sheds and she does not feel this would be a big difference.

Mr. Friesen stated he understands Engineering's concerns because there may be sidewalks in the future and parking is not allowed on the street.

Ms. Yarman stated it is her understanding there will be a curb cut there and the townhouse garages will face her garage.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Friesen agreed there is not a lot of obstruction immediately north or south of this property, but there are a number of properties close by with garages. He stated he feels 15 feet is a reasonable distance in this case. He explained that he is comfortable agreeing to a 15 foot setback from the property line, which would be a total of 22.5 feet from the curb.

Action:

A motion was made and seconded, Mishler/Manriquez, to accept the findings of the Board to allow a 15 foot front (west) yard setback where 25 feet is required along River Race Drive for a new detached garage and approve 15-41DV with the following five conditions.

1. An approved Zoning Clearance form is required before a Building permit is issued.
2. 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 approval.
3. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.
4. A right-of-way permit is required from Goshen City Engineering before a zoning clearance/building permit is issued.
5. A setback of 15 feet from the property line is required along River Race Drive.

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

15-42DV - LaCasa of Goshen requests a developmental variance to allow a front (south) yard setback of 15 feet where 30 feet is required along E Wilden Avenue for a parking/driving aisle. The subject property is generally located at 902 N Main Street and is zoned Residential R-1 District.

Staff Report:

Ms. Wiles explained this property is located at the northeast corner of North Main Street and East Wilden Avenue. Variances were granted for this property in 2008, but have expired because they were never implemented.

The Goshen Zoning Ordinance allows new principal buildings and additions to meet the average front and side yard setbacks of the houses within the block and on the same side of the street. While the petitioner is able to meet these setback requirements, the provision does not apply to accessory structures. Driveways are required to meet accessory structure setbacks and in this case there is a front (south) setback of 15 feet where 30 feet is required. While it does not meet the required setback, it is aligned with the home which exceeds the average of the front (south) setback of principal buildings along East Wilden Avenue.

She pointed out that Planning Department records indicate a significant amount of right of way was taken along the west and south property lines, which will provide an additional buffer along North Main Street and East Wilden Avenue. With the exception of the requested variance for the parking/driving aisle, the home will meet all other developmental requirements and Staff recommends approval of the request.

Petitioner Presentation:

Brad Hunsberger, 621 Emerson Street, spoke on behalf of the petition. He stated the right of way was determined by the City and LaCasa when the previous house was demolished. They have been awaiting a client to build a house on this property and feel this is a great opportunity. He asked that the request be approved.

Audience Comments:

Leonard Harms, 811 N Main St, spoke to the petition. He stated he is not for or against the petition, but would like clarification of this request. He stated he expects this intersection to be improved at some point and questioned if this will impact any construction plans.

Mr. Friesen explained the house will be built on the northern portion of this property and will meet the average setback for the neighborhood for the southern boundary. He noted that all other developmental requirements will be met.

Mr. Harms stated after hearing the explanation, he is not opposed to the request.

Ms. Wiles noted for the record that one phone call was received by the Planning office requesting clarification of the request. The caller had no concerns.

The public hearing was closed.

Staff Discussion:

There was no discussion amongst the Board members.

Action:

A motion was made and seconded, Friesen/Mishler, to find with the recommendations and conclusions of the Staff Analysis and approve 15-42DV with the five conditions listed in the Staff Report. The motion passed unanimously by a vote of 4-0.

15-26UV - 7-Eleven and Burkett Signs, Inc. request a use variance to allow internally illuminated wall (canopy) signs on the south, west and north elevations where wall signs are not permitted in the Residential R-1 zoning district and illumination of wall signs adjacent to a residential zoning district is not permitted. The subject property is generally located at 1000 S Main Street and is zoned Residential R-1 District.

****Withdrawn at the request of the petitioner.****

VII. Audience Items:

None

VIII. Staff /Board Items:

- 2016 BZA Calendar

Action:

A motion was made and seconded Friesen/Mishler to approve the 2016 Board of Zoning Appeals schedule as presented. The motion passed unanimously by a vote of 4-0.

IX. Adjournment: 5:05 pm Mishler/Friesen

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Ardean Friesen, Chair

Kelly Huffman, Secretary