

Minutes - Goshen Board of Zoning Appeals  
Tuesday, June 28, 2016 4:00 p.m.  
Council Chambers, 111 E. Jefferson Street  
Goshen, Indiana

- I.** The meeting was called to order with the following members present: Tom Holtzinger, Aracelia Manriquez, Kelly Huffman Felipe Merino, and Ardean Friesen. Also present was Assistant City Planner Abby Wiles and Assistant City Attorney Jim Kolbus.
- II.** Approval of Minutes from 5/24/16: Holtzinger/Merino 5-0
- III.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Holtzinger/Merino 5-0
- IV.** Postponements/Withdrawals: None
- V. Variances** – public hearing items  
**16-08UV** – Ida Fern Mast & Duane Mast, Harley Mast, Elva Mast and Adam Derstine request permanent approval of a use variance, approved for three years at the June 25, 2013 BZA meeting, to allow the grazing and pasturage of animals (pigs) with approximate setbacks of 135’ to the east, 25’ to the south, 0’ to the west and 100’ to the north where 500’ is required from any residential use or residential zoning boundary. Parcel number 20-11-03-301-029.000-015 is requested to be used as access. The subject property is generally located at 404 Hackett Road and is zoned Residential R-1 District.

*Staff Report:*

Ms. Wiles explained that the BZA approved a three-year variance in 2013 for grazing and pasturage of animals (pigs) with approximate setbacks of 150 feet to the north, 200 feet to the east, 25 feet to the south and 350 feet to the west, where 500 feet is required adjacent to residential use or zoning. Several conditions and commitments were included in the approval and are included in the Staff Report.

Today’s request is for permanent approval of the use variance with amended setbacks of 100 feet to the north, 135 feet to the east, 25 feet to the south and zero feet to the west. The westernmost parcel is requested for access only and will not be used as a grazing area for the pigs. The owners of the westernmost parcel have a purchase agreement with a small-scale farm, currently located outside of Goshen, who wishes to develop this parcel. A commitment is included today that if this parcel is purchased, the future owners must execute and record an access easement for the pig grazing area.

Ms. Wiles gave an overview of neighboring properties, explaining which properties currently contain farm animals. She explained that the petitioner will keep the pigs on the middle and easternmost parcels and will be located on the property from spring until fall. A maximum of 56 pigs will be permitted and the area where the pigs graze will be rotated approximately every ten (10) to twenty (20) days.

Although the petitioner requests permanent approval, Staff recommends another three year approval, based upon the fact that more information is required from Goshen Engineering. This property is located in the City’s wellhead protection five year capture zone and it is unclear at this point what impact this pig operation might have on that.

She noted that one email was received from Jonathan Byler, in support of the request.

*Petitioner Presentation:*

Adam Derstine, 211 S 7<sup>th</sup> Street, Goshen, spoke on behalf of the petition. He stated the westernmost parcel will not be used for grazing; it will only be used for access. He stated the owner of that parcel also owns another parcel with a potential access and the owner suggested the easement on the other parcel could be used for access. He stated he obtained a copy of a recorded easement for that property, noting this recorded easement would allow him to access the property without using the westernmost parcel.

Attorney Kolbus asked if the parcel with the recorded easement is one of the three parcels that were advertised. Mr. Derstine responded no.

Attorney Kolbus stated we cannot rely on this recorded easement, explaining it was not advertised as an area that would have farm equipment, animals, etc. moving onto and off of the property and would have to be advertised in order for it to be considered. He explained today's petition would have to be heard as advertised or it could be dismissed and the petitioner would have to re-file and come back another time. He further explained the Board cannot act on anything that was not advertised. He explained if today's petition is approved, Mr. Derstine could come back at a later date to get permission to access the property from an alternate parcel.

Mr. Derstine stated he did not want to re-file for another meeting and would like to be heard today.

Mr. Friesen noted it appears there have not been any complaints about this operation.

Mr. Derstine stated he has a good relationship with neighbors and is not aware of any issues. He went on to say he would like to obtain permanent approval because without it, he is unable to make any long-term plans. He stated he is unable to purchase the property if he does not know what it can be used for, noting this usage is so restricted that it is highly unlikely anything could happen that would cause problems for neighbors. He pointed out that if the City Engineer or the State of Indiana tells him he cannot have this pig operation, he understands he cannot do it and does not think it is necessary to have the BZA place a time limit on an approval.

*Audience Comments:*

Kent Holdren, Goshen Water and Sewer Department, spoke to this petition. He stated this property is located within the wellhead protection area and they are required to monitor this area for contaminants. He stated they are opposed to the request for permanent approval, but are agreeable to a three-year approval.

Mr. Friesen pointed out that monitoring would take place here regardless of whether or not the pigs are located on the property.

Mr. Holdren agreed that this area is monitored. He stated if they begin to see issues, they would like the ability to come back in three years and present their findings to the Board. He stated if Mr. Derstine's operation is running properly; there will not be an issue in three years.

Mr. Friesen questioned if the number of pigs (a maximum of 56) raises any concerns.

Mr. Holdren stated this could cause stormwater issues and ground water issues and that is why they are not comfortable with a permanent approval.

Mr. Merino questioned how testing is performed.

Mr. Holdren stated they periodically test the well for contaminants.

Ben Hartman, 11434 County Road 34, Goshen, also spoke to the petition. He stated he and his wife are purchasing the westernmost parcel and will be neighbors to this operation. He stated they intend an agricultural use for their property and Adam's use of the property next door seems appropriate for the neighborhood and will not have an adverse effect on what their intended use is. He stated he is in favor of this request.

Mayor Jeremy Stutsman, Goshen, also spoke to this petition. He stated Mr. Holdren is doing his job for the City by ensuring everyone has healthy water. He noted he also understands that Mr. Derstine is trying to plan for his

business and a temporary approval makes that difficult. He encouraged the Board to be creative and find a way to protect our water while allowing them to grow their business.

Mr. Merino asked how long it would take the City to determine if this will be a safe operation

Mr. Holdren stated that Mr. Derstine is in the five year time of travel, so if contaminates are entering the ground it might take longer. He stated they would take water samples and if contaminates are discovered, they would have to evaluate to determine where they are coming from.

Ms. Huffman pointed out Mr. Derstine has been in operation for the past five years and so far the City has not found any contamination.

Mr. Holdren acknowledged that so far, no contamination has been discovered, but it might take longer for contamination to show up. He has to protect this area and that is why he requests a three-year approval be granted and not permanent approval.

Attorney Kolbus pointed out a creative solution would be to remove commitment number one, which would approve for a three-year period and replace with a commitment stating that if it is proven at any time that the contamination of wells comes from the pig operation, he would be required to return to the Board for further action.

*Petitioner Rebuttal:*

Mr. Derstine stated that he drinks Goshen water and appreciates that it is being protected. He stated if he pollutes Goshen water, he will stop his pig operation.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Friesen stated the City has done a good job of monitoring the water, but he is more comfortable putting some sort of security measure in place.

*Action:*

A motion was made and seconded, Huffman/Merino, to find with the recommendations and conclusions of the Staff Analysis and approve 16-08UV with the following amended conditions and commitments:

*Conditions:*

1. Deviation from the requirements and conditions of the variance may result in the cancellation or termination of the approval or permit.
2. 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.
3. 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.

*Commitments:*

1. If ownership of parcel 20-11-03-301-029.000-015 changes, the new owner must execute and record an access easement for the pig grazing.
2. The number of pigs shall be limited to four per acre within the designated area, as shown on the site plan, not to exceed 56 pigs in total.
3. Grazing will be restricted to a half-acre area and used for no more than 20 days at one time.
4. No other animals shall be kept on the Real Estate.
5. There shall be no slaughtering on the Real Estate.
6. There shall be no birthing on the Real Estate.
7. There shall be no mature boar on the Real Estate.
8. Pigs may only be kept on the Real Estate from March 1 to November 30.
9. If the adjacent parcel(s) to the south are developed for residential uses, there shall be a minimum setback of 100 feet, measured from the nearest parcel line to the area where the pigs are located.

10. If it is proven that contamination of the City of Goshen water supply wellfield is coming from this operation, the Grantors are required to return to the Board of Zoning Appeals for appropriate action, including up to revocation of this use variance.

The motion passed unanimously by a vote of 5-0.

**16-13DV** – Goshen Community Schools and Lehman and Lehman request developmental variances to allow two temporary structures (modular classroom buildings) without a permanent foundation to be used through June 15, 2020 and to allow 92 parking spaces where 135 spaces are required. The subject property is generally located at 412 S Greene Road and is zoned Residential R-1 District.

*Staff Report:*

Ms. Wiles explained this property is Model Elementary School and today's request is for two developmental variances. The first is to permit two temporary modular classrooms without a permanent foundation, which will be used through June 15, 2020. The Zoning Ordinance requires structures to be built on a permanent, perimeter foundation. The classrooms will include a deck and handicap ramp and will be located at the northeast corner of the main building. They will meet all setback requirements.

The second developmental variance is to permit 92 onsite parking spaces where approximately 135 spaces are required.

The temporary classrooms are planned as a short-term solution to an anticipated increase in enrollment. Staff recommends approval of the requested variances.

*Petitioner Presentation:*

Michael Bultinck, 510 Lincolnway East, Mishawaka, IN, spoke on behalf of the petition. He stated he is familiar with Staff's recommendation and has nothing to add.

Jose Elizalde, 205 Yorktown Drive, spoke in support of the petition. He stated this is a good problem to have and asked the Board to approve the request.

Tom Boomershine, 613 E Purl, also spoke in support of project. He stated there is a need for modular's here and anticipates keeping them until 2020.

*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, Holtzinger/Merino, to find with the recommendations and conclusions of the Staff Analysis and approve 16-13DV with the four conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**16-14DV** – Goshen Community Schools and Lehman and Lehman request a developmental variance to permit two temporary structures (modular classroom buildings) without a permanent foundation to be used through June 15, 2020. The subject property is generally located at 1216 S Indiana Avenue and is zoned Agricultural A-1 District.

*Staff Report:*

Ms. Wiles explained this property is Goshen Middle School and today's request is for a developmental variance to permit two temporary modular classrooms without a permanent foundation, which will be used through June 15, 2020. The zoning ordinance requires structures to be built on a permanent, perimeter foundation. The classrooms will include a deck and handicap ramp and will be located at the southwest corner of the main building. They will meet all developmental requirements, including parking requirements. Staff recommends approval of the request.

*Petitioner Presentation:*

Michael Bultinck, 510 Lincolnway East, Mishawaka, IN, spoke on behalf of the petition. He stated as part of last year's renovation, an eight foot sidewalk was placed on the north side of the parking lot. These structures will be located an additional eight to ten feet north of that.

*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, Merino/Holtzinger, to find with the recommendations and conclusions of the Staff Analysis and approve 16-14DV with the four conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**16-15DV** – The City of Goshen Water Utility requests a developmental variance for development in the floodway fringe to install a backup power generator to maintain water service to the City, on the north side of the water plant. The subject property is generally located at 308 N 5<sup>th</sup> Street and is zoned Industrial M-1 District.

*Staff Report:*

Ms. Wiles explained this property is the Goshen Water Treatment Plant. This request is for a developmental variance to develop within the floodway fringe, for the installation of a backup power generator on the north side of the plant. This backup generator would be used to maintain water service to the City and placement within the fringe is necessary because the Water Plant's electric power enters the plant from the north side of the building. The Flood Control District regulations require the generator to be elevated to the flood protection grade, which is two feet above the base flood elevation. An elevation certificate has been provided which states the generator will be elevated to 2.17 feet above the base flood elevation, which meets the requirements. Staff recommends approval of the request.

*Petitioner Presentation:*

Kent Holdren, Goshen Water Utilities spoke on behalf of the petition. He stated he has nothing to add and is here 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 the Board.

*Action:*

A motion was made and seconded, Holtzinger/Friesen, to find with the recommendations and conclusions of the Staff Analysis and approve 16-15DV with the six conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**16-09UV** – Todd and Diane Woodworth and Reuben Yoder request a use variance to allow the addition of a third residential dwelling unit to an existing non-conforming two-family dwelling unit (expansion of a non-conforming use). The subject property is generally located at 1601 S 8<sup>th</sup> Street and is zoned Residential R-1 District.

*Staff Report:*

Ms. Wiles explained this request is to allow the addition of a third residential dwelling unit to an existing non-conforming two-family dwelling unit. Planning and Building Department files indicate the property was previously a three-unit dwelling, with the prior owner living in one unit, and using the other two units as registered rentals. Building Department information from 2007 indicates there were water problems in the basement unit and that it would probably not be a rental again. During a May 2016 rental inspection by the Building Department, the new owner indicated he would like to restore the basement unit. Because the basement apartment use had been discontinued for 18 consecutive months, it lost its non-conforming status and a use variance is required to restore the third unit.

Although the basement unit lost its non-conforming status, the property was previously a three-unit and there are a number of multi-family residential units in the immediate area. Parking has been evaluated and meets the requirements. Staff recommends approval of the request.

*Petitioner Presentation:*

Todd Woodworth, 1511 S 8<sup>th</sup> Street, Goshen, spoke on behalf of the petition. He stated he is familiar w/Staff report and recommendations.

Mr. Friesen asked if he anticipates additional vehicle traffic.

Mr. Woodworth stated most of the traffic is bicycle traffic and not car traffic.

Mr. Holtzinger questioned the parking arrangements.

Mr. Woodworth stated the tenants have been good about working out parking arrangements and noted they generally use bicycles and allow their cars to remain parked.

Mr. Holtzinger asked if he anticipates any problems with neighbors.

Mr. Woodworth stated he has spoken with several neighbors and that he does not anticipate any problems.

*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 members.

*Action:*

A motion was made and seconded, Merino/Holtzinger, to find with the recommendations and conclusions of the Staff Analysis and approve 16-09UV with the four conditions and two commitments listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**VI.** Audience Items:

None

**VII. Staff Board Items:**

- *Commitment Form termination request for 125 S 6<sup>th</sup> Street (12-06UV)*

Ms. Wiles explained that on October 23, 2012, the BZA granted 12-06UV to allow a church in combination with residential use at 125 S 6<sup>th</sup> Street. This variance expired because it was not implemented within the required timeframe. In December 2015 the property was purchased by new owners and they have stated interest in bringing a request to the BZA this fall to allow a second dwelling unit and tailoring business and have asked that the current commitment form be terminated. Because the commitment form was recorded, we need a motion from the Board to accept the termination request.

*Motion:*

A motion was made and seconded, Huffman/Holtzinger, to terminate the commitment associated with use variance 12-06UV because the use variance was never implemented and expired. The motion passed unanimously by a vote of 5-0.

**VIII. Adjournment: 5:04pm Huffman/Merino**

Respectfully Submitted:

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Lori Lipscomb, Recording Secretary

Approved By:

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Ardean Friesen, Chair

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Kelly Huffman, Secretary