

Minutes - Goshen Board of Zoning Appeals  
Tuesday, November 22, 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, and Felipe Merino. Also present was City Planner Rhonda Yoder and Assistant City Attorney Jim Kolbus. Absent: Kelly Huffman

*Ms. Yoder advised the Board that Ardean Friesen has moved outside the Goshen City limits and no longer owns property in Goshen, which makes him ineligible to be a member of the Board of Zoning Appeals. Until such time as a replacement has been appointed, Vice-Chair, Tom Holtzinger will be acting chair.*

**II.** Approval of Minutes from 10/25/16: Merino, Manriquez 3-0

**III.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Holtzinger/Merino 3-0

**IV.** Postponements/Withdrawals: None

**V. Variances** – public hearing items

**16-24UV & 16-33DV** – Diana Metzler requests a use variance to permit expansion of a non-conforming use (single family dwelling in a Commercial B-1 District), and a developmental variance to permit a 6' front yard setback along N. 23rd Street, where 25' is required, for the construction of a 12' x 28' shed to replace a 12' x 24' garage that was destroyed by fire. The subject property is generally located at 1607 E Lincoln Avenue and is zoned Commercial B-1 District.

*Staff Report:*

Ms. Yoder explained this use is non-conforming because this is a single family dwelling unit in a Commercial B-1 zoning district and single family uses are not permitted in the B-1 district. The non-conforming use is subject to Section 6250 of the Goshen Zoning Ordinance which states if the non-conforming structure is destroyed, the non-conforming status is eliminated. This property contained a 12' x 24' detached garage that was destroyed by fire in May, 2016. A use variance is required in order to place the proposed shed on the property. A developmental variance is also requested to allow a six foot setback along North 23<sup>rd</sup> Street, which would place the shed in line with the existing home. She explained that the majority of uses in this B-1 zoning area are residential and zoning along the south side of East Lincoln Avenue is residential, with primarily residential uses. Staff recommends approval of the requested variances.

*Petitioner Presentation:*

Diana Metzler, 1607 E Lincoln, spoke on behalf of the petitioner. She stated the garage was destroyed by fire in May of this year and she would like to replace it with the proposed shed. She stated she does not want the shed placed where the previous garage stood because she is concerned for the neighbor's property, should something happen again.

Crystal Wright, 108 S 29<sup>th</sup> St, daughter of Ms. Metzler, spoke on behalf of the petition. She stated that her mother enjoys working in her yard and this shed will allow her a place to store her lawn equipment.

*Audience Comments:*

Jonathan Stoltzfus, 1605 E Lincoln Ave., spoke in support of the petition. He stated he lives next door and when the fire burned Ms. Metzler's garage, his shop was also damaged. He stated he has no objection to the shed being rebuilt on the property.

*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 16-24UV & 16-33DV with the three conditions listed in the Staff Analysis. The motion passed unanimously by a vote of 3-0.

**16-25UV & 16-34DV** – Ben Hartman, Rachel Hershberger, Elva D & Viola Jean Mast, and Jeffrey Schaffer request use and developmental variances as follows:

- Use variance to allow the construction and operation of a commercial greenhouse with up to five employees;
- Use variance to allow grazing and pasturing with a 25' setback (east, west and north) and 10' setback (north-existing barn) for areas where animals are kept, where separation of 500' is required adjacent to residential zoning;
- Developmental variance to allow subject property to be developed following Agricultural A-1 District developmental standards;
- Developmental variance to allow single-family detached dwelling unit with 41' width at front lot line, where 66' is required in the R-1 District (and 100' in A-1 District); and
- Developmental variance to allow the property to be served by a well, where connection to City water is required.

The subject property is generally located at 340 Hackett Road (new address-located between 314 and 402 Hackett Road), with ±8.9 acres and zoned Residential R-1 District.

*Staff Report:*

Ms. Yoder explained this is Clay Bottom Farms, a small farm currently located on County Road 34. They presently support a 50 member Community Supported Agriculture (CSA) group in which members purchase a share and receive weekly produce. They also provide produce to a number of Goshen restaurants. They wish to relocate their farm to Goshen to be closer to their customers; no on-site sales or pick-ups of produce are proposed with this request.

Currently the property contains approximately 8.9 acres and an existing barn. It also provides secondary access to the property at 404 Hackett Road and includes a detached accessory building which is used by the owners of 404 Hackett Road. If the variances are approved and Clay Bottom Farms purchases the property, an approximate one-half acre of land containing the detached accessory building, would be retained and would require an ingress/egress easement to be executed and recorded for 404 Hackett Road as part of the Clay Bottom Farms approval. The previous variance for pig grazing will also need to be amended for new access and to reduce the land that is part of the variance.

She explained the Planning Office looked at rezoning the property to Agricultural A-1, but due to inadequate lot frontage and reduced setbacks for grazing and pasturing, rezoning would not have alleviated the need for variances. It was determined the best option was the combined use and developmental variances. She explained that use variances are requested for the commercial greenhouse because it is not a permitted use in the R-1 zoning district and to allow grazing and pasturing with reduced setbacks. The requested developmental variances include allowing the subject property to follow A-1 developmental standards, to allow the single-family dwelling unit with inadequate lot frontage, and to allow the property to be served by a well. She went on to explain this property is located in the City's Wellhead Protection Area and noted that Goshen Utilities does not support the request for the property to be served by a well unless it is utilized for irrigation only. She pointed out City water is available and the primary use should be connected to City water.

She advised Staff recommends approval for the requested developmental and use variances.

*Petitioner Presentation:*

Jeffrey Schaffer, 3720 Oakridge Dr, Elkhart, spoke on behalf of the petitioner. He stated they concur with Staff's recommendations, including hooking up to City water and using the well for irrigation only. They also agree with all of the conditions and commitments listed in the Staff Report.

*Audience Comments*

Elva Mast, 402 Hackett Road, Goshen spoke in support of the request. He asked what was meant by the Wellhead Protection area.

Ms. Yoder explained Wellhead Protection areas require special design of the stormwater retention, noting this is not a zoning issue, but a Utility Department issue.

Mr. Mast stated he supports this petition.

*The public hearing was closed.*

*Staff Discussion*

There was no discussion amongst the Board members.

*Action:*

A motion was made and seconded, Merino/Manriquez, to find with the recommendations and conclusions of the Staff Analysis and approve 16-25UV & 16-34DV with the following conditions and commitments:

*Conditions:*

1. The variance is granted for a period of six (6) months, and 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.
2. Deviation from the requirements and conditions of the variance may result in the cancellation or termination of the approval or permit.
3. 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.
4. 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.
5. An approved zoning clearance form is required before a building permit is issued.
6. An ingress-egress easement over the subject property to serve 404 Hackett Road shall be executed, recorded, and a recorded copy provided to the Planning office.
7. Transfer of the approximately one-half acre tract of land, to be retained by the current landowner and containing a detached accessory building, shall occur prior to the execution and recording of the Results/Commitment form.
8. The two tax parcels making up the subject property shall be combined into one tax parcel at the time the property is transferred from the current owner to a new owner.
9. Variance 16-08UV shall be amended, with an application submitted to and public hearing held by the BZA, removing the subject property from the variance and providing new access to the remaining land.
10. All required site plans shall be based on a survey.

*Commitments:*

1. The commercial greenhouse use shall be limited to five employees.
2. No retail sales shall occur on the subject property.
3. No CSA distribution or other customer pick-ups shall occur on the subject property.
4. Connection to City water and sewer is required. A well may be installed, limited to irrigation only.

The motion passed unanimously by a vote of 3-0.

**16-26UV & 16-35DV** – Mullet Battery, Inc., and Signtech Sign Services, Inc., request a use variance to permit an electronic message center sign (EMC) in a Commercial B-1 District, where the use is permitted in Commercial B-2, B-3, B-4 and Industrial M-1 and M-2 Districts, and developmental variances to permit an illuminated freestanding sign 43 square feet in area, 16' in height, mounted on an existing pole, where a non-illuminated, monument style freestanding sign 32 square feet in area and 8' in height is permitted. The subject property is generally located at 1513 E Lincoln Avenue and is zoned Commercial B-1 District and Residential R-2 District.

*Staff Report:*

Ms. Yoder explained this property is a non-conforming commercial use, noting that information in the Planning Department files indicate this property has a history of low intensity auto related uses. She explained the intent of the B-1 zoning district is to allow small scale businesses to serve the neighborhood in which they are located. The Zoning Ordinance indicates the size and location of these businesses will be strictly controlled to protect neighboring residential uses. She went on to say there are several commercial businesses on the north side of Lincoln Avenue, but the majority of uses in this area are residential. She gave a brief overview of past approvals for signs on the property, including a variance approved in 2013 which allowed a 30 SF freestanding sign, 13' in height, and with a zero foot setback.

Today's proposal is for a freestanding sign with a total area of 43 SF, where 32 SF is permitted in the B-1 District. A 12 SF electronic message center (EMC), which is not permitted in the B-1, is also proposed as part of this sign. The sign would be mounted on the existing pole and have an overall height of 16'. This would provide the required 8' of clearance under the sign because of its location near an intersection.

Staff recommends denial of the use variance to permit an electronic message center and approval of an amended developmental variance to permit an internally illuminated freestanding sign, 13.5' in height and mounted on the existing pole.

*Petitioner Presentation:*

Lynn Mullet, 1513 E Lincoln Avenue, spoke on behalf of the petitioner. He gave a brief history of the property, noting the only signage since 1991 was on the front of the building. He stated new customers often comment they were not previously aware of this store's location. He stated that at one time they had other tenants in the building and the tenants used the existing signage. Since they now occupy the entire building they would like to place a sign in that location to advertise their business along with advertising for sales, specials, etc. He noted they are looking at a remote controlled, programmable EMC with lights that can be adjusted at night so they are not as bright. He pointed out the EMC sign would face their business and a vacant lot to the west, noting he feels this would be a positive addition to the neighborhood.

Mr. Holtzinger pointed out there are neighbors across the road to the south, noting this could be a concern for them.

Mr. Merino referred to the drawing provided in the Staff Report and questioned which areas of the sign would be illuminated.

Mr. Mullet explained the top portion of the sign would be internally illuminated and the bottom portion of the sign would contain the EMC.

Mr. Merino stated in preparation for today's meeting, he drove by the location and noted the existing sign is very difficult to see.

Todd Lehman, Signtech Sign Services, 1508 Bashor Road, spoke to the petition. He stated he understands why the petitioner would like to install an EMC sign and pointed out that in previous variance requests, the Board has required EMC signs to be turned off between certain hours. He explained that option would also be available here.

*Audience Comments:*

Jonathan Stoltzfus, 1605 E Lincoln Avenue spoke in favor of the request. He stated Mullet Battery is a welcome addition to the neighborhood and he supports the request.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Holtzinger asked what size sign is permitted and if it can be illuminated.

Ms. Yoder responded a sign of 32 SF is permitted and in this case it can be illuminated because it has been in the past. She noted that when the sign ordinance was recently updated, freestanding signs and wall signs in the B-1 are not allowed to be illuminated. She explained this sign has been illuminated in years past and her recommendation is to allow the freestanding sign to be illuminated, but not to allow the EMC.

Mr. Holtzinger stated this property has been kept up over the years.

Mr. Merino stated he likes to support businesses and if the new signage will help them attract customers, he supports the request. He also pointed out notices went out to neighboring property owners and if anyone felt strongly about the sign, they would be here today to be heard.

*Action:*

A motion was made and seconded, Merino/Manriquez, to adopt findings of the Board and approve 16-26UV & 16-35DV with the following conditions and commitments:

*Conditions:*

1. The variance is granted for a period of six (6) months, and 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.
2. Deviation from the requirements and conditions of the variance automatically cancels and terminates the approval or permit.
3. The Board of Zoning Appeals approval shall be effective when the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff and when all conditions of approval have been met.
4. No zoning clearance form will be issued until the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff and until all conditions of approval have been met

*Commitments:*

1. Illumination of the electronic message center (EMC) portion of the freestanding sign is permitted during business hours only and must be turned off when the business is closed.

The motion passed unanimously by a vote of 3-0.

**VI.** Audience Items:

None

**VII.** Staff Board Items:

- *6-month extension for 308 N 5<sup>th</sup> Street (16-15DV) from 12/28/16 to 6/28/17*

Ms. Yoder explained this extension request is for the installation of a backup generator at the City's water plant, at 308 N 5<sup>th</sup> Street. According to Dustin Sailor, the project has been bid and they are working through contract requirements. They asked for a six-month extension and anticipate the construction to be completed in 2017.

*Motion:*

A motion was made and seconded, Merino/Manriquez, to approve a six-month extension from 12/28/16 to 6/28/17 for 16-15DV, 308 N 5<sup>th</sup> Street. The motion passed unanimously by a vote of 3-0.

- *Approval of 2017 BZA calendar*

Ms. Yoder asked that the 2017 BZA calendar be approved and entered into the record.

*Motion:*

A motion was made and seconded, Merino/Manriquez, to approve the 2017 BZA calendar.

**VIII.** Adjournment: 4:59 pm

Respectfully Submitted:

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Lori Lipscomb, Recording Secretary

Approved By:

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Tom Holtzinger, Acting Chair

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Kelly Huffman, Secretary