

Minutes - Goshen Board of Zoning Appeals
Tuesday, May 23, 2017, 4:00 p.m.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

- I. The meeting was called to order with the following members present: Aracelia Manriquez, Richard Aguirre, Doug Nisley, Brad Hunsberger and Tom Holtzinger. Also present was Assistant City Planner Jon Hunsberger and Assistant City Attorney Jim Kolbus.
- II. Approval of Minutes from 3/28/17: Aguirre/Hunsberger 5-0
- III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Nisley/Manriquez 5-0
- IV. Postponements/Withdrawals: None
- V. **Variations** – public hearing items
17-09 DV – Gordon Prieb and Mary Metzler request a developmental variance to allow a 5’4” fence in the frontyard setback along Adams Street, where 4’ is permitted. The subject property is generally located at 1108 S 14th Street and is zoned Residential R-1 District.

Staff Report:

Assistant Planner Hunsberger explained this fence is on the property of a single-family home, located at the intersection of S. 14th Street and Adams Street. The zoning ordinance identifies both street frontages as front yards and fences placed within the front yard setback are allowed a maximum height of four feet. The fence in question was installed along Adams Street without Planning approval and is 5’ 4” in height. Because the fence does not encroach into the public right-of-way and does not interfere with vision clearance, Staff recommends approval of the fence, provided it is only along the east side of the driveway along Adams Street. The fence currently encroaches into the utility easement and utility companies were consulted with the correspondence forwarded to the petitioners. The BZA may not grant permission for that encroachment and anything placed in the easement is done at the property owner’s risk and expense.

Petitioner Presentation:

Gordon Prieb and Mary Metzler, 1108 S 14th Street spoke to the petition. Mr. Prieb stated the fence was installed to replace arborvitae that served as a fence. This fence was designed for privacy, but will not obstruct vision. The fenced area will also allow for a garden that will not be exposed to the street. He stated they spoke with four neighbors and none have any concern about the fence.

Mrs. Prieb stated the bushes that were removed were very tall and they didn’t realize there would be a height restriction for the fence.

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/Hunsberger, to find with the recommendations and conclusions of the Staff Analysis and approve 17-09DV with the four conditions listed in the Staff Analysis. The motion passed unanimously by a vote of 5-0.

17-07UV – JD Hershberger, Richard Hobson, and Jeffery A Martin request a use variance to permit a tattoo parlor in a Commercial B-2 zoning district where the use is conditional in the Commercial B-3 and Industrial M-1 districts. The subject property is generally located at 101 S 3rd Street and is zoned Commercial B-2 District.

Staff Report:

Assistant Planner Hunsberger explained this property is located on the southwest corner of 3rd Street and Lincoln Avenue. He described current and previous uses, noting the second floor of the building has historically been used as residential units. He explained the 440 sf unit could easily accommodate low intensity uses or a start-up business. Staff pointed out the tattoo parlor use is not permitted in the B-2 zoning district and does not meet two of the conditional use requirements; specifically that tattoo parlors may not be adjacent to, or contiguous to, residential use or zoning district boundary lines, and shall be located a minimum distance of 750 feet from any church buildings, licensed day care centers, public parks, school building, or school playground. Staff recommends denial of the request, but if approved, recommends four conditions that are listed in the Staff Report.

Petitioner Presentation:

JD Hershberger, 2430 Tulip Blvd., spoke to the petition. He provided personal background information on himself and his business partner. He explained their vision of opening a tattoo parlor is to make it one that the community and their families would be proud of, noting that an atmosphere of class and sophistication is of utmost importance to them. He stated their intent is to provide a positive addition to the downtown and an additional asset to the many unique businesses in the community. He acknowledged that tattoo parlors have a negative connotation and asked the Board to view the request, keeping in mind that they strive to set the standard for a tattoo parlor.

He stated there will be no nudity, no smoking, no alcohol and no loitering inside or outside the premises. Signs will be clearly posted explaining where people should park and community friendly hours of operation are planned. Weekday hours would be to a maximum of 10:00 pm; with weekend hours until 11:00 pm.

Jake Kinsey, no address provided, stated he is Mr. Hershberger's partner. He provided background on his nearly 20 years tattoo experience and reinforced that the intention is to open an upscale tattoo business in the community. He explained their sterilization process for equipment, noting that everything they use is disposable and safe to throw into the trash. He explained the ink cartridges are safe and cannot poke anyone after being removed from the machine. He stated the biohazard waste is very minimal. He asked that the Board grant approval of the request.

Mr. Holtzinger asked where the waste is stored.

Mr. Kinsey stated the waste is deposited into a trash can and then transferred to a dumpster.

Mr. Holtzinger stated the Planning office had received a letter with concerns that hazardous trash would be deposited into dumpsters.

Mr. Kinsey stated that if required, they could place their own locking dumpster. Biohazard stickers could also be placed on the dumpster alerting people of what is inside.

Mr. Holtzinger questioned how they will keep people from loitering on the property while awaiting tattoos.

Mr. Kinsey stated he works by appointment only and that they do not take walk-in customers, although he acknowledged there could be some walk in customers scheduling appointments for tattoos or consultations.

Mr. Nisley asked if he understood correctly that the needles are harmless once they've been removed from the gun and asked how they are disposed of.

Mr. Kinsey stated the tattoo industry has moved away from the traditional needles and that once these needles are removed from the machine, they are self-contained and do not pose a threat.

Mr. Hershberger reiterated these needles pose no threat once they have been removed from the machine, but they could see that they are placed in red garbage bags to give everyone peace of mind. He went on to say any specials they run will be for repeat customers and will not be \$20 and \$30 tattoo specials like the ones area tattoo parlors advertise, because that's when customers come and stand around. He explained the tattoo and piercing areas will be sectioned off to keep people away from the area that are not having work performed. Their vision is to have a tattoo shop that will go unnoticed by the general public.

Mr. Aguirre asked how many employees and customers are anticipated.

Mr. Hershberger stated there would be a maximum of two artists and he would be there occasionally for managerial duties. As for customers, he noted their customers are by appointment only and that regulates how many people are in the shop at one time. He also noted that because of the amount of time tattoos take, most people coming for tattoos come alone. For this reason they do not anticipate multiple people in the shop at one time, but there will be the occasional customer coming in to book an appointment. It will not be a place to hang out.

Mr. Aguirre asked what type signage will be used.

Assistant Planner Hunsberger stated signage has not been discussed, but will have to comply with the B-2 Historic District guidelines.

Mr. Aguirre asked if that will allow fully illuminated signage during business hours.

Assistant Planner Hunsberger stated it would be permitted, but with some restrictions. He also pointed out that only a wall mounted sign would be permitted at this location; no freestanding sign would be allowed.

Mr. Hershberger stated they would like to have their logo in the window, but because of social media, they don't feel they need a lot of signs advertising their business.

Mr. Holtzinger asked if this business will be open seven days per week.

Mr. Hershberger stated they will be open a minimum of five days per week with a maximum of six days. They will not be open on Sunday's and afternoon hours only are anticipated on days they are open.

Mr. Aguirre questioned where people will park.

Mr. Hershberger stated customers will be directed to park in the City parking lot across the street.

Assistant Planner Hunsberger pointed out there are no parking requirements in the B-2 zoning district.

Jeff Martin, 63 Greenway Drive, also spoke to the petition. He stated he is the owner of the building, having purchased it in 2011. He renovated the building and has been looking for a tenant for a long time.

Mr. Aguirre asked his plans for the second floor.

Mr. Martin stated the second floor has four, one-bedroom apartments that have been occupied for the past four years or so.

Audience Comments:

Jeremy Stutsman, 202 S 5th St, spoke in support of the petition. He stated he has spoken with the petitioners and he is convinced this is a good step for both the downtown and for Goshen. This will bring a new art form to the City and he supports anything that builds the arts. He feels this is good for the area.

Felipe Merino, 101 N 3rd St, also spoke in support of the petition. He stated he lives directly across the street from this building and is glad to see it has been renovated, but asked that any signage on the Lincoln side of the building remain non-illuminated. He also raised concerns regarding minors and their ability to obtain tattoos.

Mr. Kinsey stated there is no state law regarding age, but the shop does have restrictions.

Linda Clark, 109 S 3rd Street, also spoke to the petition. She stated she is in favor of the renovations to the building and has no problem with tattoo parlors, but feels the Board of Zoning Appeals should follow their own laws and City ordinances. She noted her main concern is for parking and does not want customers parking in her parking lot. She asked that customers be directed to park in the City lot. Her other concern is trash from the shop and how they plan to secure it. She asked that they be required to have an infectious waste disposal service and that they are not allowed to have any trash outside that contains infectious waste.

Mr. Holtzinger asked if she is in favor of the tattoo parlor if her concerns regarding parking and trash are addressed.

Ms. Clark stated she is ok with the tattoo parlor, but feels they should be required to post a sign on their building regarding the parking and not wait until clients show up. She also noted that she is concerned that people will congregate outside on the sidewalk to smoke like they do in other locations.

Petitioner Rebuttal:

Mr. Hershberger stated he appreciates the concerns that have been raised and if having a stipulation requiring a certain trash removal, that is fine with them. It will not be an issue. He noted that all of their advertising will state where clients are expected to park and if they are parked in the wrong area, they will be asked to move their car. Addressing the concern regarding people standing around smoking, he stated smoking will not be permitted in or near their facility.

The public hearing was closed.

Staff Discussion:

Mr. Aguirre asked if the City of Goshen has a policy against tattoo parlors.

Assistant Planner Hunsberger stated Ordinance 3792, adopted October 7, 1997, defines tattoo parlors and limits the zoning districts where they are allowed, provided they meet several conditional use requirements outlined in the ordinance.

Mr. Nisley stated he agrees with the mayor that times have changed and pointed out that Goshen is trying to promote itself as an artistic city and he feels a lot of the tattoos he has seen are artistic. He feels Goshen should allow these petitioners to bring this service to the City. He recommended the Board approve this request.

Mr. Holtzinger asked if he would consider a conditional review in two years.

Mr. Nisley stated he does not have a problem with a review because he knows they will do what they say they will do.

Attorney Kolbus pointed out this approval can be granted for a period of two years and return to the Board for review. He also recommended adding commitments that no illuminated sign be permitted on the Lincoln Avenue side of the building and that it be operated as represented at today's meeting.

Mr. Holtzinger pointed out there was also discussion on how to handle the waste and asked if that matter should be referred to the County Health Department.

Attorney Kolbus stated he doesn't know if the County handles this or not.

Mr. Hunsberger asked the petitioner how much waste is generated.

Mr. Kinsey stated each tattoo will use perhaps a quarter of a roll of paper towels, the needle, and a pair of latex gloves.

Mr. Hunsberger asked if the paper towels are bloody.

Mr. Kinsey stated there is some blood, but the towels are not saturated or dripping blood.

Mr. Nisley asked if antibiotics are used and wiped with the paper towel.

Mr. Kinsey responded yes.

Mr. Manriquez voiced concerns that this is located near churches and daycares, noting that if this is allowed others will likely want to open as well.

Attorney Kolbus pointed out that each case would be reviewed on its own merits.

Assistant Planner Hunsberger pointed out there are other findings of facts that need to be considered as well. He noted in this case he felt the petitioner could meet items one, two and five, however; the building itself is a typical downtown building with mixed use and doesn't meet the criteria for item three. He stated he does not feel they meet item four, although the owner has explained he has found a tenant for the second unit in this building, but this unit has been vacant for the past year. He stated that another use could go into this building so the Board would have to agree on a finding of fact that this is an unusual hardship. He pointed out that the finding of fact would need to be satisfied in order to grant this approval.

Mr. Nisley questioned if they have to find this is a hardship on the owner because the space is not rented.

Assistant Planner Hunsberger stated that yes, it needs to be determined that if this variance is denied, it will be a hardship to the owner.

Mr. Nisley pointed out that this has been empty for a year and if the owner does not accept this offer, it could set empty for another year. He stated he feels this would be a hardship to the owner.

Regarding criteria three, Mr. Holtzinger stated this building has no parking of its own, is a small space and would be difficult to rent to just any client. He also pointed out this location has a somewhat unsavory background and feels this makes a strong case for meeting the criteria.

Action:

A motion was made and seconded, Nisley/Holtzinger, to accept the findings of the Board, noting that criteria three and four can be met, and approve 17-07UV with the following conditions and commitments:

Conditions:

1. If a Building permit is required, 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 may result in the cancellation and termination of 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 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. 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.
2. Any signs along Lincoln Avenue shall not be illuminated in any manner.
3. Approval is granted in accordance with the use variance petitioner's presentation at the public hearing before the Goshen Board of Zoning Appeals on May 23, 2017.
4. The Grantor or its successor in interest must return to the Board of Zoning Appeals if terms of the approval are violated.

The motion passed by a vote of 4-1 (Nisley, yes; Hunsberger, yes; Holtzinger, yes; Aguirre, yes; Manriquez, no.)

VI. Audience Items:
None

VII. Staff Board Items:

- 6-month extension from 5/22/17 to 11/22/17 for 16-25UV & 16-34DV – 340 Hackett Road, Clay Bottom Farms
- 6-month extension from 6/27/17 to 12/27/17 for 16-37DV - 310 W Waverly Avenue

Mr. Hunsberger stated he was not a Board member when these were approved and asked for an explanation of the original approvals.

Assistant Planner Hunsberger explained there were some survey errors that had to be corrected for 340 Hackett Road. Closing on the property was completed in late February and a site plan is currently under review by City staff. The request for 310 W Waverly Avenue is for the construction of a barn with a residential use upstairs. The extension is requested because there are some architectural questions that have not been addressed between family members.

Action:

A motion was made and seconded, Aguirre/Manriquez, to grant six-month extensions for 16-25UV & 16-34DV – 340 Hackett Road, Clay Bottom Farms and 16-37DV - 310 W Waverly Avenue. The motion passed unanimously by a vote of 5-0.

VIII. Adjournment: 5:10 pm Hunsberger/Nisley

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Tom Holtzinger, Chair

Richard R. Aguirre, Secretary