

Minutes - Goshen Board of Zoning Appeals
Tuesday, July 25, 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: Richard Aguirre, Aracelia Manriquez, 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 6/27/17: Aguirre/Manriquez 5-0
- III.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Nisley/Aguirre 5-0
- IV.** Postponements/Withdrawals: None
- V. Variances – public hearing items**
17-08UV – **Tabled from 6/27/17** Scott Van Gilst, Diana Estrada and Mario Garcia request a use variance to allow a Child Care Home where the home is not the legal residence of the provider and where the conditional use requirements cannot be met. A use variance granted June 23, 2015 required that the petitioner return in two years if the Child Care Home has not been relocated off of the real estate. The subject property is generally located at 427 N First Street and is zoned Residential R-1 District.

Staff Report:

Attorney Kolbus explained that the Board tabled this motion at last month's meeting due to a 2-2 vote. He asked Ms. Manriquez if she had familiarized herself with the request and if she was ready to vote today.

Ms. Manriquez stated she was not familiar with the case and was not prepared to vote on it.

Attorney Kolbus asked if any Board member was prepared to change their vote and if not, asked for a motion to table this request to the next meeting.

Action:

A motion was made and seconded, Hunsberger/Aguirre to table 17-08UV to the August, 2017 meeting. The motion passed unanimously by a vote of 5-0.

17-14DV – Goshen Memorial Chapter 15, Inc. and Signtech Sign Services request developmental variances to allow an electronic message center sign (EMC) in a non-conforming sign where an EMC may not be added to any non-conforming sign and to permit EMC sign area of 100% where an EMC is limited to 50% of the sign area. The subject property is generally located at 708 W Pike Street and is zoned Commercial B-3 District.

Staff Report:

Assistant Planner Hunsberger explained this request is for modifications to a non-conforming freestanding sign, to allow an electronic message center where not permitted. He explained the existing freestanding sign contains a double-faced illuminated sign and a double-faced changeable copy sign. This existing sign was relocated from the northeast corner of the building along Pike Street and approved at this location on December 7, 2000. He explained the existing changeable copy sign is 32SF, which is two times the

permitted area of coverage or 56% of the aggregate sign area. By comparison the BZA approved the addition of EMC signs to non-conforming freestanding signs at the following:

- 906 W Pike Street – EMC was 20SF and 22% of the aggregate sign area;
- 1712 Elkhart Road – Existing sign area larger than permitted at 88 SF and new EMC area of 24SF (27% of sign area)

Several examples of freestanding signs are located along this commercial corridor that have been modified to meet or nearly meet current developmental sign standards. He gave examples including Dairy Queen and Kroger Fuel Center who were both approved for slightly larger signs than allowed, based upon frontage. A larger sign was denied for Premier Rental and a compromise was reached with Long John Silver for their requested signs. Walgreen's also added an EMC and changed their sign to meet the ordinance.

He went on to say that a freestanding sign of 50SF and 15' in height is permitted, based upon the 132' of frontage. He pointed out older signs in the area were built before the current sign ordinance went into effect and will likely be replaced by permitted signs over time. He went on to say EMC signs are a costly investment and feels it is appropriate that the sign should be in compliance with the ordinance.

Staff recommends the request be denied, but listed seven recommended conditions if the Board grants approval to the request.

Petitioner Presentation:

Todd Lehman, 1508 Bashor Road, spoke on behalf of the petitioner. He stated his customer's concern is the manual changeable copy and because of numerous EMC signs nearby, they presented their customer with an option of replacing the existing manual changeable copy sign with an EMC sign. This would allow the customer to have more flexibility in advertising upcoming events and specials. He explained he cannot speak to the flexibility of his client, adding this proposal would allow the existing changeable copy sign to be replaced by an EMC sign with no further changes to the structure itself.

Mr. Nisley asked if someone is present that has the authority to make changes to the request, noting that he would like to get this sign more in line with the ordinance requirements. He explained he has taken the time to draw up a sign proposal (*Exhibit 17-14DV #1*) that he feels would be a sort of compromise, noting his proposal has two different options and explaining both options to the Board and the petitioner. He presented a drawing of his "Option 1" to Board members and the petitioner.

He explained Option 1 would be to lower the sign pole to 15', illuminating the top, DAV portion of the sign, keeping the same size for the electronic portion of the sign and adding 1.5' to the top for the DAV message. Option 2 would include moving the top DAV portion of the sign to each end of the building and raising the sign up to 8'. He noted both of the DAV signs on the ends of the building could be illuminated. He also explained this sign would likely remain non-conforming, but asked that we find a way to work together on this.

Mr. Aguirre asked if Mr. Lehman had any alternate proposal for a new sign.

Mr. Lehman stated his client's goal for obtaining this variance is to ask permission to replace only this portion of the sign with an electronic message center. He explained his proposal here today was recommended by the DAV Board and he can only present what they have requested.

Mr. Hunsberger asked if it is practical to split the sign in half and mount the upper portion on the building. Mr. Lehman stated he does not know how big it would be and if it would rotate or come down.

Mr. Hunsberger stated if they were placed on the building, it would be easily identifiable to those coming from the east or west.

Mr. Lehman pointed out this would require electrical outlets for power to the signs and the existing pole already has electric to that location.

Mr. Nisley noted that moving the DAV signs to the ends of the building would likely incur additional costs for not only electric, but possibly a frame.

Mr. Lehman agreed that the cost effective way appears to be the recommendation by Mr. Nisley.

Audience Comments:

Craig Stiver, 912 Lynwood Drive, Goshen spoke in support of the petition. He asked if the proposed change meant the top part of the sign would be back-lit and not electronic.

Mr. Nisley responded yes.

Mr. Stiver asked if the overall height could be dropped to meet the 15' requirement and have the EMC below the vertical portion of the sign.

Mr. Nisley pointed out he doesn't think there would be room to drop the overall height to 15' and raise the bottom to meet the 8' height requirement.

Assistant Planner Hunsberger stated the top sign is 8', the lower sign is 4' and if it is raised up to meet the 8' vision clearance requirement, the total height would be 20' where 15' is allowed.

Mr. Stiver noted he is a Chapter Officer with the DAV and stated he is in favor of the modification.

John Peterson, 125 EMS D24 Lane, Syracuse, spoke to the petition. He questioned the cost of Option 2 with the DAV sign moved to the ends of the building. He asked if this could be implemented at a later date if it is approved now.

Assistant Planner Hunsberger stated they would be considered wall signs and photos of the building show that they would likely meet the requirements of the ordinance. He explained the wall sign requirements for the B-3 zoning district and stated this is certainly something that can be looked into at a later date.

Jim McKee, 2359 Redspire Blvd, also spoke to the petition. He stated US 33 has been widened over the years which makes this more complicated. He stated he feels the request is reasonable and hopes that as veterans, we can approve this request.

Mr. Aguirre questioned if Mr. McKee supports the requested version of the sign or the proposed modification to the sign.

Mr. McKee stated he does not care as long as an electronic sign is approved for them.

The public hearing was closed.

Staff Discussion:

Mr. Aguirre asked if the sign can be moved any farther east.

Assistant Planner Hunsberger stated it could not be moved a significant distance. He noted the freestanding sign was moved to this location when the road was widened several years ago.

Mr. Nisley also pointed out moving the base of the sign would be an added expense.

Mr. Hunsberger asked if this request will include landscaping.

Mr. Nisley stated that he does not feel landscaping is necessary. Because it would add more cost and maintenance, he recommends landscaping not be required.

Action:

A motion was made and seconded, Nisley/Hunsberger to accept the findings of the Board and approve Option 1 as described by Mr. Nisley and approve 17-14DV with the following conditions:

1. 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.
2. Deviation from the requirements and conditions of the variance automatically cancels and terminates the approval or permit.
3. An approved zoning clearance form is required.
4. The freestanding sign is approved for a maximum height of 15', maximum width of 8', an electronic message center 4'x8' (32sf) in area, and an illuminated sign 1.5' x 8', with the bottom edge of the sign 8' from grade level.
5. A zero foot setback is approved for the freestanding sign.
6. Landscaping is not required for the freestanding sign.

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

17-15DV – 7-Eleven, Inc. and National Illumination & Sign Company request developmental variances to permit a new illuminated freestanding sign, with no illumination limitations, approximately 32 square feet in area and approximately 16 feet in height, with an electronic pricing panel, zero foot setback and no landscaping. This variance request was previously approved (16-01DV) and the sign illumination was limited to the hours between 6:00 am to 12:00 am. The variance was not implemented, has expired, and requires a new hearing. The subject property is generally located at 1000 S Main Street and is zoned Residential R-1 District.

Staff Report:

Assistant Planner Hunsberger explained this property is located at the intersection of Jackson Street and South Main Street. Zoning for this and all adjacent parcels is Residential R-1. Zoning records indicate a gasoline service station has operated here since at least the early 1970's with a number of variances granted for the property. Previous variances include the following:

- March, 1973 – Special use permit for employee parking on an adjacent lot;
- February, 1991 – Use variance to permit expansion of non-conforming use including a new canopy and three new gasoline pumps to the existing service station;
- February, 1992 – Various developmental variances including a change in the logo and reader boards and a freestanding sign to encroach up to five feet of the property line. (Additional right-of-way has since been dedicated and the sign is now located within the right-of-way.)
- February, 2016 – Use variance to allow illuminated wall signs on the south, west and north elevations and various developmental variances, including an illuminated freestanding sign with an EMC panel (Variance was not implemented and has expired.)

The petitioner's existing freestanding sign is approximately 101SF in area and 24.5' in height. In a previous, but now expired approval, Staff requested the petitioner reduce the sign area to 32SF, with 8' of clearance between the ground and the bottom panel of the sign, which would result in an overall height of 16'. The petitioner modified the request accordingly and presented a proposed freestanding sign of approximately 32SF in area and 16' in height for today's consideration. The proposed sign area has been reduced which will considerably reduce the potential to be a nuisance to neighboring residents. As proposed, the sign will be moved onto private property and Staff recommends low, no maintenance ground cover in lieu of traditional shrubbery that would not interfere with the vision clearance area. The ground cover would be located within the petitioner's proposed curb area around the sign. Staff recommends approval of the requested variance.

Petitioner Presentation:

Neil Jeakle, National Illumination & Sign, 6525 Angola Road, Holland, OH spoke on behalf of the petitioner. He stated he understands approval was granted last year for the freestanding sign, but lighting restrictions were placed on the approval and the petitioner did not want the lighting on the sign turned off from midnight to 6:00 am while they were still open, so the variance was allowed to expire. He explained the sign will be moved out of the right-of-way and onto their property. The sign has also been reduced in size and would include an LED pricing panel. He stated he does not think landscaping is proposed, but there will be a curb around the sign. He explained there is an national electric code stipulation that anything below 14' in a paved area must be protected with bollards or a curb and in this case, a curb will be provided.

Mr. Holtzinger stated he likes the smaller proposal for the sign.

Mr. Jeakle stated he feels this is a compromise.

Audience Comments:

Patik Patel, owner/manager of the 7-Eleven at 1000 S Main Street, spoke to the petition. He stated he recently became aware of the proposed sign change, explaining that any changes to, or on the real estate, is strictly 7-Eleven's decision. He stated when this was presented previously, his customers in the neighborhood voiced concerns about the bright lights. He stated he feels this is still an issue. He also pointed out that traffic coming from the north will not see the sign if it is moved onto the property. Traffic coming from the south have approximately five seconds to see the sign if they are driving at the speed limit. He noted that because the sign is changed manually, when gas prices go up, they will sometimes be slower to increase their price, causing vehicles to drive erratically trying to pull into the station. His fear is that if this sign is moved farther back onto the property, it will be more difficult to see the gas prices and could have a negative effect on traffic from people trying to see the sign. He stated his preference is to leave the sign as is. He noted he spoke with several neighborhood residents and they feel they will still be impacted by the lights from the sign and are not in favor. He pointed out the property is owned by 7-Eleven and it's his understanding they want their stores to switch over to LED which would allow them to automatically change prices. He agreed this would be a nice feature, but feels if the sign is moved back where it won't be easily seen, it defeats the purpose.

Mr. Holtzinger asked who's idea it was to move the sign.

Assistant Planner Hunsberger explained the right-of-way has shifted, meaning this sign is no longer located on private property. He pointed out if this petition is denied, the sign would remain as is. Any changes other than routine maintenance requires the sign to be moved onto private property.

Mr. Patel explained he feels the need to protect his business and while 7-Eleven is a partner, he was not aware of this request until he received a notice from the City that this request had been made. He stated he has spoken with his field consultant and market manager and he has to protect his business and employees. He doesn't feel that pushing his sign back is what's best for his business. He also noted if he had been aware of this request sooner, he would have had time to contact others at 7-Eleven in the hopes of finding another option.

Adam Scharf, 1631 ½ S Main Street, also spoke to the petition. He asked that the Board support the local business owner and his preferences.

Jeremy Stutsman, 202 S 5th Street, also spoke to the petition. He stated he feels the LED sign would offer great service to the business and the community and will be a better visual for the neighborhood. He stated if there is a way the BZA can pass this with a condition that it can stay where it is if they get approval from the Board of Works (BOW) or the State of Indiana, they could present it to the appropriate agency for approval

at a later date. If the appropriate agency does not allow the sign to remain in the right-of-way, the sign would have to be moved onto private property.

Petitioner rebuttal

Mr. Jeakle responded the current sign is fluorescent and it is possible that the LED conversion on the interior of the sign which would have a comparable lumens output. He noted the red price signs will not be bright at night because as the red lights get brighter, they become fuzzy and difficult to read. The signs are designed with built-in dimmers. He pointed out the proposed sign will be much smaller, making the lumens output less than the current sign. He explained the proposed sign would be moved approximately 10' and the LED pricing panels would lowered approximately 2.5'. He stated he feels it's in his client's best interest to move this sign out of the right-of-way and onto his own property.

Mr. Patel stated he is ok with leaving the sign where it is and if they can find a way to install the LED lighting.

Mr. Nisley pointed out the current sign is in the right-of-way and does not conform with the City ordinance. He questioned what would happen if LED lighting is added and the sign has to be removed because additional right-of-way is required, noting money spent to upgrade the sign would be wasted. He pointed out if the sign is moved now, it will be more in compliance with the ordinance.

Mr. Patel agreed that if the illumination for the LED sign fluctuates it would be a great option if illumination was allowed 24 hours per day. He feels the neighbors concerned with nighttime light would not be opposed to this recommendation. He stated he is not interested in moving the sign onto the property.

The public hearing was closed.

Staff Discussion:

Mr. Aguirre noted this is an unusual situation where the owner of the property and the owner of the business are not in agreement and he is uncomfortable moving forward with a recommendation when the business owner says it will hurt his business. He commented that he feels the sign will be more difficult to see if it is moved back onto the property. He questioned if it would be a good idea to table this request and give the property owner and the business owner time to discuss options.

Mr. Nisley stated he feels most of Mr. Patel's business is likely local and know where he is. He doesn't feel moving the sign will hinder his business. He also stated he feels we should concentrate on our sign ordinance and this is something we're trying to accomplish. He pointed out the owner has asked that this sign be moved out of the right-of-way so it doesn't cost him again if additional right-of-way is taken and he doesn't feel this will hurt the business if the sign is moved.

Mr. Aguirre stated that while he doesn't disagree with Mr. Nisley's comments, he feels the business owner should have been contacted.

Mr. Nisley commented that we don't know if the business owner was contacted by 7-Eleven, but that's not our fault.

Mr. Aguirre pointed out there is no big problem with delaying this decision so they can have that discussion. Assistant Planner Hunsberger pointed out that the proposed freestanding sign was approved last year, but with the limited hours of illumination. He went on to say this is not new for the owner because he would have been notified last year. He would have also been notified of the approval. He pointed out the previous minutes do not reflect any comments from the manager.

Mr. Nisley asked Mr. Patel why they did not comment on this proposal last year.

Mr. Patel stated they operate multiple businesses and last year his father was in charge of this specific location. He stated they had several personnel issues at that time and this request was not relayed to him. He stated when the notice was received this year, his father told him they had received notice last year as well, but it was not a priority to him at that time.

Action:

A motion was made and seconded, Aguirre/Hunsberger to table 17-15DV, to the next meeting in order to allow the business owner to communicate with the property owner regarding the petition. The motion passed unanimously by a vote of 5-0.

17-16DV – Genesis Products, Inc. and Construction Designs by Rodman, Inc., request a developmental variance to allow a landscaping berm 3.5 feet in height, where a 6' berm is required, where the available land between the right-of-way and parking lot is limited to less than 30 feet, has utility poles present, and where regular mowing maintenance requires a lower, more gradual berm. The subject property is generally located at 2515 Industrial Park Drive and is zoned Industrial M-1 District.

Staff Report:

Assistant Planner Hunsberger explained this property is Genesis Products which received a developmental variance in 2016 to allow for a 29,660 building addition. A setback variance was also approved with conditions, but a request to allow an alternative landscaping plan where full bufferyard landscaping is required was denied. The berm height was designed to be constructed between the overhead power line poles and the parking lot. If installed as designed, the slope would be impractical for mowing. Today's proposed landscape plan would compensate for the lack of height and prevent additional nuisance to the neighbors. The final planting for this request is 80, with 61 shrubs or trees planted to date. 19 additional trees or shrubs would be planted with this approval. Because the limited area does not allow for full landscaping, Staff recommends approval of this request.

Petitioner Presentation:

Brad Rodman, CDR Construction, 109 E Clinton Street spoke on behalf of the petitioner. He stated the designer drew topo lines at the 6' requirement, but no one took the time to realize this would require 42' to construct that. He stated when they were onsite, they had to choose between being out of compliance on either the height or the slope. They chose to maintain the slope and build a shorter berm. He explained utility poles and cable boxes along Kercher Road would be impacted and the roadside ditch would be gone, pushing any water onto the road. He stated they did what they could to stay true to the intent.

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, Hunsberger/Nisley, to find with the recommendations and conclusions of the Staff Analysis and approve 17-16DV with the three conditions listed in the Staff Analysis. The motion passed unanimously by a vote of 5-0.

17-17DV – Francisco Javier Diaz requests a developmental variance to allow a front (north) yard setback of approximately 13’ where 25’ is required along E. Douglas Street and to allow an open parking space within the front yard setback for an expansion of an existing driveway. The subject property is generally located at 816 E Douglas Street and is zoned Residential R-1 District.

Staff Report:

Assistant Planner Hunsberger explained this is a single-family home, located on a corner lot in a residential neighborhood. The proposed parking adjacent to the existing driveway and would provide one additional parking space that would otherwise be located along the street. Several neighboring properties have two car driveways and this expansion would not adversely affect the surrounding neighborhood. An open parking space along the alley is restricted by trees and utility poles. The proposed parking addition would be located adjacent to the current permitted drive and allows ample space between the parking and the alley. Staff recommends approval of the request.

Petitioner Presentation:

No one was present to speak on behalf of the petitioner.

Mr. Holtzinger asked if the petition would have to be tabled.

Attorney Kolbus stated that has been past practice, but the Board can act on the request if they wish.

Mr. Hunsberger stated he has no concerns and would like to act on this today.

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

17-18DV – Lionshead Development, LLC and Jones Petrie Rafinski Corporation request a developmental variance to allow a parking/driving aisle setback of 8.5’ where 30’ is required along Steury Avenue for a new parking lot. The subject property is generally located at 305 Steury Avenue and is zoned Industrial M-1 District.

Staff Report:

Assistant Planner Hunsberger explained this request is part of an overall proposal that includes a two story addition for a new corporate headquarters, new parking areas, enlarged water retention area and a 38,000SF building addition. The current roadway configuration for that section of Steury Avenue will have an open space between the current edge of pavement and the property line of approximately 10’ with 25’ between the edge of the pavement and the parking lot. The proposed driving aisle will be approximately 35’ from the property line. If the roadway pavement were doubled to 48’, there would still be approximately 15’ between the roadway pavement and the parking/driving aisle pavement. The west side of the site has planned onsite drainage areas that would make it difficult to reconfigure the site plan to accommodate additional parking spaces and staff would not support creating additional access points on Olive Street. Buildable area is

limited, so relaxing the setback requirements for a portion of the property may be necessary to make the site viable for this use. A 2012 variance for a parking/driving aisle setback of 9' where 30' is required was approved for the adjacent property at 320 Steury Avenue and this request is consistent with the use and development patterns of the area. Staff recommends approval of the request.

Petitioner Presentation:

Matt Schuster, 200 Nibco Parkway, Elkhart spoke on behalf of the petitioner. He explained the location of the additional property purchased by Lionshead, noting where the additional parking would be located for the corporate office expansion. He is available to answer any questions.

Audience Comments:

Jeremy Stutsman, 202 S 5th Street, Goshen spoke in support of the petition. He stated both the Plan Commission and City Council are in support of this and ask that the Board approve the request.

The public hearing was closed.

Staff Discussion:

There was no discussion amongst Board members.

Action:

A motion was made and seconded, Aguirre/Nisley to find with the recommendations and conclusions of the Staff Analysis and approve 17-18DV with the three conditions listed in the Staff Analysis. The motion passed unanimously by a vote of 5-0.

VI. Audience Items:

None

VII. Staff Board Items:

Mayor Stutsman asked Attorney Kolbus if the BZA can hold special meetings.

Attorney Kolbus responded yes.

Mayor Stutsman stated he was not present at the beginning of the meeting, but would like to suggest that the Board hold a special meeting to review the daycare request for 427 N 1st Street. He stated they have now waited 60 days and with the new school year beginning, there are a lot of parents trying to decide what to do. He encouraged the Board to consider a special meeting in the next couple weeks.

Attorney Kolbus stated a special meeting could be called by the Chair or any two members. He went on to say a 48 hour posting, with notice to the news media is required.

Action:

A motion was made and seconded Hunsberger/Aguirre to amend the previous motion for 17-08UV and table to an agreed upon time of August 1, 2017 or August 3, 2017, pending Board member schedules. The motion passed unanimously by a vote of 5-0.

VIII. Adjournment: 5:50 pm Aguirre/Hunsberger 5-0

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Tom Holtzinger, Chair

Richard R. Aguirre, Secretary