

Minutes – Goshen Board of Zoning Appeals, Special Meeting
Tuesday, August 1, 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. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Nisley/Aguirre 5-0

III. **Variations** – public hearing items

17-08UV – **Tabled from 6/27/17 and 7/25/17** 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.

Attorney Kolbus stated this was tabled in June because of a 2-2 vote. Ms. Manriquez was absent from that meeting and at last week's meeting she had not had the opportunity to review the materials from the June meeting. Mr. Kolbus asked if she had now reviewed the materials.

Ms. Manriquez stated she has reviewed the materials.

Attorney Kolbus stated that at this time the public hearing is closed and there should be a discussion among Board members with a vote. He stated if any testimony is required by the Board, the petition will have to be tabled and a 10 day notice given for a public hearing. Today is a public meeting only and no one is bound by a prior vote.

Staff Discussion:

Mr. Holtzinger stated he was on the Board in 2015 when this was approved for a two year period. He noted that during discussion at that time Board members felt they were doing a good job with what started as a home daycare, but by adding the second home daycare, they felt it was more of a commercial use and the Board felt was not the intent of the ordinance. He went on to say that by giving them an approval for a two year period the Board expected them to find an alternative location and did not expect them to come back. He stated the 2015 minutes were clear that no one had any doubts about the good job they were doing, but pointed out that by renting two adjacent houses, it opens the door to expanding beyond the intent of the zoning ordinance and home occupations. He pointed out that when a business gets a certain size they should move on to a commercial format.

Mr. Nisley stated that after reading the 2015 minutes, it appeared clear that if they continued to grow they were expected to move out and find a new location where this use was permitted. He stated he also has concerns that by granting this, we might as well do away with the ordinance regarding home businesses. He pointed out they do not reside in the home and that's the purpose of the ordinance. He stated he has a problem granting this request for an unlimited period of time with the current ordinance.

Attorney Kolbus stated the Board is not bound by the 2015 minutes and they are only a matter to consider. He went on to say that if Board members feel facts presented at the June meeting justify an action, they can override the intent of the 2015 minutes.

Assistant Planner Hunsberger also pointed out that even though the request is for permanent approval, the Board can place a time limit on this request.

Mr. Aguirre stated he appreciates the previous comments, but is moved by the need for this kind of facility. He stated housing and business space are both difficult to find and is not surprised they have not found another location for their daycare business. He stated there may be other neighborhoods where this use would be suitable, but nearby residents would not want it. He pointed out that even though there was testimony against this in 2015, no one spoke against this use this year. He stated he feels they are doing a quality job and serving people well and he feels this fills a need in the community. He stated he is in favor of granting this petition, but feels it would be reasonable to put a two year or so limit on it so it can be reviewed again. He feels this would give residents an opportunity to voice concerns or complaints.

Attorney Kolbus pointed out previous minutes indicate two comments were received by Staff; one comment opposed the request, the other was in favor of the request.

Mr. Hunsberger stated he has some reservations with the possibility that this was misrepresented in 2015. He noted they never intended to move, but he doesn't feel this would preclude the Board from giving them another year or two. He agreed that they are doing a good job and providing a needed service, but after hearing the testimony given here and what is in the records, he questions where the line gets drawn. He pointed out this is the reason for the ordinance and the rules. He agrees with Mr. Aguirre that if this is approved it should be with a time limit and we should try to impress upon the petitioner that they need to find an appropriate location for this because it has moved from a childcare home to a childcare center.

Ms. Manriquez questioned if the business has grown from 2015 to present.

Assistant Planner Hunsberger stated they are still within the 16 child limit for each childcare home.

Ms. Manriquez stated she drove by this location and noted that traffic could be a potential problem. She also stated that if they are not going to live in this house, they need to look for another location for this since it is not a home based business.

Mr. Holtzinger pointed out that the testimony described the children as coming from outside the neighborhood so the location doesn't seem to be important.

Attorney Kolbus stated the record shows that in June of this year, Assistant Planner Hunsberger asked how many children attend the daycare home and it was stated there are 12 children per house. He went on to say when asked that question in 2015, the answer was "about 10 at each house; the license permits 12". He stated there are possibly one or two more, but it is unclear.

Mr. Nisley commented that previous testimony stated several of the children live outside of Goshen.

Mr. Aguirre stated he doesn't feel that makes any difference because we welcome people to Goshen to shop and these are people that identify with Goshen.

Ms. Manriquez stated the parents likely work in Goshen and they drop their children off before going to work.

Mr. Holtzinger stated his point is that this location is not the driving force; it happens to be where they found a location that worked for them.

Ms. Manriquez pointed out both homes have 12 children for a total of 24 children, noting that 24 children would make a nice size daycare.

Mr. Hunsberger stated he feels not serving neighborhood children is relevant to the impact on the neighborhood. If there were neighborhood children here it would mean less traffic which he feels impacts the neighborhood.

Mr. Aguirre pointed out there is certain synergy by having these homes side-by-side and the applicant's parents live at this location.

Mr. Holtzinger stated he would be willing to offer a one year extension, but if they want the second daycare home, they need to find a location that will allow it.

Mr. Nisley asked if the Board has the authority to say they have to be gone at the end of the extension. Attorney Kolbus stated they always have the right to reapply and the Board at that time will make their own decision, taking into account what was said in the past.

Assistant Planner Hunsberger stated their childcare home license is effective from July 1, 2016 to June 30, 2018. He pointed out the current license will expire on June 30th of next year and that might be something to consider if they decide to grant a one year extension.

Mr. Nisley stated he feels if we go against the ordinance we will continue to have these requests, noting the ordinance was written around these home businesses being run by the occupant of the home.

Action:

A motion was made and seconded, Nisley/Holtzinger, to find with the recommendation and conclusion of the Staff Analysis and deny 17-08UV. The motion failed by a vote 2-3. (Nisley, yes; Manriquez, no; Hunsberger, no; Aguirre, no; Holtzinger, yes)

Action:

A motion was made and seconded, Hunsberger/Manriquez, to accept the findings of the Board and approve 17-08UV, to allow the Child Care Home to continue for a period of one year from this meeting date, in order to satisfy the intent of the Board that a new location be found by the end of the one year period. The motion passed by a vote of 4-1. (Nisley, no; Manriquez, yes; Hunsberger, yes; Aguirre, yes; Holtzinger, yes)

IV. Adjournment: 4:27 pm Aguirre/Hunsberger

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Tom Holtzinger, Chair

Richard R. Aguirre, Secretary