

Minutes - Goshen Board of Zoning Appeals  
Tuesday, February 27, 2018, 4:00 p.m.  
Council Chambers, 111 E. Jefferson Street  
Goshen, Indiana

**I.** The meeting was called to order with the following members present: Doug Nisley, Richard Aguirre, Brad Hunsberger, and Tom Holtzinger. Also present was Assistant City Planner Jon Hunsberger and Assistant City Attorney Jim Kolbus. Absent: Aracelia Manriquez

**II.** Approval of Minutes from 1/23/18: Nisley/Aguirre 4-0

**III.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Aguirre/Nisley 4-0

**IV.** Postponements/Withdrawals: None

**V. Variances – public hearing items**

**18-02DV** – Wayne and Carl Schrock and Marbach, Brady & Weaver, Inc. request developmental variances to allow a seven foot fence with barbed wire in the front yard setback along Peddler’s Village Road where the maximum fence height permitted in the front yard setback is four feet and where barbed wire is only permitted in the M-1 and M-2 Industrial Districts. The subject property is generally located at 2733 Peddler’s Village Road and is zoned Commercial B-3 District.

*Staff Report:*

Assistant Planner Hunsberger explained a developmental variance was granted by the BZA on 12/27/16 to allow the construction of four new self-storage buildings, where frontage on the property was insufficient. Based upon Planning Department records, the preliminary site plan, BZA site plan, and Tech Review site plan did not contain a fence. A revised site plan dated 12/21/16 included “proposed fence” on the plan, but because no details were provided, it was not reviewed and was not included on the approved zoning clearance form.

The fence could have been installed at or behind the front yard setback, but because barbed wire is not permitted in the B-3 zoning district, it would still need BZA approval. The required street trees have not been planted and are now proposed to be planted in the public right-of-way along Peddler’s Village Road. The proposed location of the trees in the public right-of-way was not approved during Tech Review or on the zoning clearance form. A six to eight foot fence in the front yard setback is not compatible with the surrounding residential properties and while the location of the fence would not interfere with vision clearance, street trees planted in the right-of-way would be less than ten feet from the road.

For security reasons, the fence surrounding the property will include barbed wire and while not a permitted use in the B-3 zoning district, Staff feels it is appropriate in this case.

Staff recommends denial of the seven foot fence in the front yard setback, but approval of the barbed wire. Staff recommends the fence be moved to the required 35’ setback line, with the barbed wire permitted for the entire site. This will allow the street trees to be planted on private property and per the approved site plan.

*Ms. Manriquez joined the meeting at 4:04pm*

*Petitioner Presentation:*

Debra Hughes, Marbach, Brady & Weaver, Inc., 3220 Southview Drive, Elkhart, spoke on behalf of the petitioner. She stated when the site plans were submitted to the City for review, the owner was unavailable and because it was unclear what type of fence the owner wanted, it was noted on the revised drawings as “proposed”. She explained the fence has been installed at the property line and the reasons are two-fold. First, the location will allow snow to be pushed into the retention basin and second, it will allow more room for larger vehicles to make the turn around the building, thereby keeping the fence from being hit repeatedly by trucks and large vehicles. She stated the property owner is willing to look at some options which could include a four foot fence at the front property line, sections of fences between the trees, or other options.

Mr. Holtzinger asked why the trees were not planted.

Ms. Hughes stated the construction of the retention basin wasn’t finished until last fall.

Assistant Planner Hunsberger stated the approved site plan required seven small trees because of the proximity to utilities. He also asked for clarification if there are underground utilities in addition to the overhead utilities.

Ms. Hughes stated they were not hired to do a survey and the survey that was provided to them did not indicate underground utilities, but noted there are clearly overhead lines here.

Assistant Planner Hunsberger stated if underground utilities are present, trees could not be planted there and permission to plant in the right-of-way would be required from the Board of Works (BOW).

Ms. Hughes stated the trees could be planted in the bottom of the retention basin or along the slope.

Attorney Kolbus asked Ms. Hughes where the drop off begins in relation to the setback line.

Ms. Hughes stated the design shows it would be approximately four feet, but she cannot confirm that it was built that way. She also stated the owner is willing to lower the fence to four feet if it can remain at the property line.

Assistant Planner Hunsberger pointed out Staff would not recommend a four foot fence with barbed wire.

Wayne Schrock, 13352 County Road 42, Millersburg, also spoke to the petition. He stated if the barb wire is an issue, it can be removed and plain wire added in its place.

Assistant Planner Hunsberger stated the barbed wire is not at issue here as Staff supports that part of the request. The issue is that the fence is located where the trees should be planted.

Mr. Hunsberger pointed out there is a discrepancy on the two site plans included in the packets regarding the location of the retention basin. He noted one site plan shows the north side of the retention basin begins at the building setback line, the other site plan indicates the retention basin is placed farther north.

Ms. Hughes stated that the owner wanted more pavement and the fence had not been included so the site plan was revised. The retention basin was also redesigned to be narrower and deeper.

Assistant Planner Hunsberger stated Staff’s recommendation was for the fence to be at the 35’ setback line, but it could be somewhat closer and possibly placed closer to the slope.

Mr. Hunsberger stated that would be somewhat of a compromise, noting that he doesn’t feel the turning radius and snow removal is relevant. The site should be designed to meet the regulations.

Assistant Planner Hunsberger stated all of the drive aisles meet the regulations. He also pointed out for the record that there is no approved zoning clearance form on file for the fence and if one had been submitted, it would have been addressed before the fence had been installed.

Mr. Hunsberger asked if the petitioner would be willing to move the fence to 30’ instead of the required 35’.

Ms. Hughes stated that would put the fence into the slope and would make mowing difficult.

Mr. Schrock stated he would not be in favor of that suggestion because he does not want to move the fence.

Mr. Aguirre asked Assistant Planner Hunsberger if it was ever acceptable for the trees to be planted inside the fence instead of outside.

Assistant Planner Hunsberger stated the conflict isn't whether or not the trees are inside or outside the fence. The discussion is that the approved site plan located the trees on private property, but they are now proposed in the public right-of-way and the fence was installed without permission. If they had submitted a zoning clearance and site plan for the fence, Staff would have explained the trees were to be planted at that location and the proposed fence did not meet the zoning requirements. He explained that in other instances, Staff has allowed the required street trees to be planted in alternate locations. He stated the trees could likely be planted on the other side of the retention basin, near the drive aisles.

Mr. Schrock stated he would prefer to see the trees in the fence row or at the bottom of the retention basin.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre asked Assistant Planner Hunsberger what his thoughts are regarding placing the trees inside the fence.

Assistant Planner Hunsberger stated the fence has displaced the trees into the right-of-way. He suggested allowing the fence to remain where it is, with the existing height, and moving the trees the same amount of distance, to the opposite side of the fence. That would get the trees out of the public right-of-way and prevent any issues if there are buried utilities in the right-of-way.

Attorney Kolbus clarified Assistant Planner Hunsberger's statement to say the petitioner's request is keep the fence where currently located and as a condition of that approval, the trees must be placed on the north side of the fence within a certain distance from the fence. He asked Ms. Hughes for an estimate of the distance between the existing fence and the proposed location of the trees if they had been planted in the public right-of-way.

Ms. Hughes stated that Mr. Schrock would prefer the trees be planted at the bottom of the retention basin which is approximately 15' from the fence.

Mr. Hunsberger commented that street trees are designed to hide buildings and if the trees are planted in the bottom of the retention area it defeats the purpose of the trees.

Assistant Planner Hunsberger noted that Engineering approval would also be required to allow the trees to be planted in the retention basin.

Mr. Nisley commented that only a certain type of tree can be planted in a retention basin and cautioned against trees at the bottom of the basin. He suggested that trees planted along the slope can be squared off and filled with rock so you don't have to mow around them.

Assistant Planner Hunsberger asked Ms. Hughes the distance between the trees and the fence in their proposal.

Ms. Hughes estimated it is approximately three feet to the center.

Attorney Kolbus noted Mr. Aguirre suggested the trees be located four or five feet on the other side of the fence.

Mr. Holtzinger commented that the Board could grant that and if the petitioner does not agree, he could meet the requirements.

Mr. Aguirre stated he would like to make this his motion.

Mr. Hunsberger stated he feels the six foot fence with barbed wire on the right-of-way line is contradictory to the intent of making the right-of-way more attractive.

Mr. Holtzinger stated he agrees, but feels Mr. Aguirre has offered a compromise.

Mr. Aguirre asked if any calls had been received regarding this petition to which Assistant Planner Hunsberger responded no.

*Action:*

A motion was made and seconded, Aguirre/Nisley to accept the findings of the Board and approve 18-02DV 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 the BZA approval.
2. The required street trees must be placed with the center of the trees within five feet (5') of the north side of the approved seven foot fence.
3. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.
4. An approved zoning clearance form is required.

A roll call vote was requested with the following outcome: Nisley, yes; Manriquez, yes; Aguirre, yes; Holtzinger, yes; Hunsberger, no. The motion passed by a vote of 4-1.

**VI.** Audience Items:  
None

**VII.** Staff Board Items:  
None

**VIII.** Adjournment: 4:43 pm Nisley/Aguirre

Respectfully Submitted:

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Lori Lipscomb, Recording Secretary

Approved By:

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Tom Holtzinger, Chair

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Richard Aguirre, Secretary