

Minutes - Goshen Board of Zoning Appeals  
Tuesday, September 25, 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: James Ramer, Richard Aguirre, and Tom Holtzinger. Also present was City Planner Rhonda Yoder, Assistant City Planner Rossa Deegan and Assistant City Attorney Jim Kolbus. Absent: Brad Hunsberger, Aracelia Manriquez
- II. Approval of Minutes from 8/28/18: Aguirre/Ramer 3-0
- III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Aguirre/Ramer 3-0
- IV. Postponements/Withdrawals: None
- V. **Tabled Item** – (tabled from August 28, 2018, BZA meeting) – public hearing item  
**18-11UV** – Antonio Hernandez (owner) requests a use variance to allow the addition of a bathroom in a basement storage area of a two-unit residential dwelling, without connection to City water. The subject property is generally located at 508 Dewey Avenue and is zoned Residential R-2 District.

*Ms. Manriquez joined the meeting at 4:02 pm.*

*Staff Report:*

Ms. Yoder explained this is a two-unit residential dwelling, connected to City sewer, but not City water. When the unit was constructed in 1990, the zoning clearance indicated that both public sewer and water were to be connected. During a recent inspection related to a 3<sup>rd</sup> dwelling unit in the lower level, it was discovered the property was not hooked up to City water, making the property non-conforming. She verified that City water is available on Dewey Avenue.

She explained the owner has removed the 3<sup>rd</sup> dwelling unit, with plans to use the area for personal storage, but he would like to keep the bathroom without connecting to City water. She pointed out if the owner connected to City water, no variance would be required. Because water is available, there is no basis to support a variance and the requirements of the Zoning Ordinance can be met. Ms. Yoder reported that two calls were received in opposition to the variance.

Staff recommends denial of the variance.

*Petitioner Presentation:*

Antonio Hernandez, 124 S 7<sup>th</sup> Street, Goshen, spoke on behalf of the petitioner. He stated he stores personal items here and would like to keep the bathroom because it is convenient. He stated the bathroom was installed in 2009 without permits because he was not aware permits were required.

Mr. Holtzinger asked if this is a rental property.

Mr. Hernandez stated the first and second floors are rentals, but the basement is used for storage only. He went on to say that when he lived at the property, the basement was converted into living space and bathroom when his brother moved in.

Mr. Holtzinger asked if it would cause a hardship for him to connect to City water.

Mr. Hernandez stated it would depend on the cost.

Mr. Holtzinger asked when the well was last inspected.

Mr. Hernandez stated he has never had the well tested.

Mr. Aguirre asked if it would be a problem for him to remove the bathroom.

Mr. Hernandez stated he can remove it if it's required by the Board, but he would like to keep it.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre asked if the City could give Mr. Hernandez a cost estimate for running the water line to his property and then allow him to decide how he would like to proceed.

Ms. Yoder responded yes, but if this is how the Board wants to proceed, it should be resolved within a limited timeframe.

*Action:*

A motion was made and seconded, Aguirre/Holtzinger, to find with the recommendations and conclusions of the Staff Analysis and deny 18-11UV based on the reasons listed in the Staff Report, and requiring resolution within 60 days of today's decision, with the subject property connected to City water or the bathroom in the basement storage area removed by November 25, 2018. The motion passed unanimously by a vote of 4-0.

**VI. Use & Developmental Variances – public hearing items**

**18-24DV** – Schrock Homes requests a developmental variance to allow a 21' rear yard (north) setback where 25' is required, for the addition of a 72 sf deck on a new single-family home, currently under construction. The subject property is generally located at 2205 Westoria Drive and is zoned Residential R-2 PUD District.

*Staff Report:*

Mr. Deegan explained this request is for a single-family home, currently under construction in Westoria Subdivision. The applicant would like to construct a 72 sf deck on the rear of the home with an encroachment of 4' into the 25' rear yard setback. Staff has analyzed this and adjacent lots and finds the request reasonable. He explained that because this is a corner lot development is more difficult. He noted that several of the adjacent properties have similar or greater footprints, with decks twice the size of the one requested today. All other developmental requirements are met for the home and Staff recommends approval of the requested variance.

*Petitioner Presentation:*

Adlai Schrock, Schrock Homes, 2523 Messick Drive, Goshen, spoke on behalf of the petitioner. He stated this is the last house for this area and while the potential buyer started out with a smaller deck, they decided they would like a larger deck which resulted in this variance request. He pointed out the rear setback requirement is 25' and this setback would become 21' which will not affect the neighbor.

*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, Aguirre/Holtzinger, to find with the recommendations and conclusions of the Staff Analysis and approve 18-24DV with the three conditions listed in the Staff Report. The motion passed unanimously by a vote of 4-0.

**18-14UV** – Pine Manor, Inc., (Miller Poultry) and Abonmarche Consultants, Inc., request a use variance to allow the continued expansion of a non-conforming use, expanding a hatchery in a B-1 District (previous variances 07-09UV and 11-11UV) with up to 33,340 square feet of additional building space in eight phases, additional parking, up to 25 employees, expansion into 2706 and 2708 S Main, and to allow the variance to be valid until September 25, 2023. The subject property is eight tax parcels, generally located at 2704, 2706 and 2708 S Main Street and is zoned Commercial B-1 District.

*Staff Report:*

Mr. Deegan gave background information regarding this property, noting that it operates as a poultry hatchery which is a non-conforming use in the B-1 District. Use variances were approved for expansion in 2007 and again in 2011. Each approval was granted with the condition that they reapply every five years.

The 2007 approval was two-phase, including the demolition of approximately 7,500 sf and 12,000 sf of expansion. Approximately one-third of that was completed and the variance in 2011 allowed the expansion to continue, based on the 2007 plans. The 2007 and 2011 use variance approvals both limited truck traffic to the site and the number of employees. Although the use variance in 2011 was approved, none of the proposed construction has occurred.

Today's request is to allow continued expansion of the non-conforming use approved in 2011. The site plans have changed and the expansion is anticipated to be in eight phases, explained as:

- Phase 1 – 6 are additions to the existing hatchery totaling approximately 21,440 sf;
- Phase 7 is approximately 2,300 sf and will enclose an existing loading dock;
- Phase 8 is for construction of a 9,600 sf structure in the northeast corner of the property.

He noted that seven of the eight phases are similar in location and size to the original two phases planned in 2011, but Phase 6 is entirely new. He went on to say Phases 1 and 5 will eliminate 14 parking spaces, so a new parking area is planned on the north end of the property, adding 20 spaces.

He explained that Staff has been informed the phases might take place in any order and are dependent on future business. It's also possible that one or more of the phases may never be completed. The proposed expansion for Phase 6 has been reviewed and meets most of the B-1 developmental requirements, but does not meet the requirement for building size and setbacks adjacent to residential property. Staff has concerns that the expansion encroaches on two residences owned by the company. Another concern is that future Phase 6 expansion will affect the residential character of the surrounding part of South Main Street.

He pointed out it is not necessary to limit traffic and number of employees for this site as those are difficult for the Planning Office to monitor and are best regulated based on developmental requirements.

He noted that an adjacent property owner, Dr. Terrance Kaeser, contacted the Planning office voicing support for the request, but asked that no additional landscaping be required on the north side of the driveway. Staff feels if the steel structure and parking lot is expanded in this area, the City would like to see the required partial landscaping.

Staff recommends an amended approval with conditions and commitments.

*Petitioner Presentation:*

JC Schrock, DJ Construction, 3414 Elkhart Road, spoke on behalf of the petitioner. He stated with the exception of Phase 6, this is basically the same footprint. He stated he spoke with Galen Miller, the property owner, and they felt that for the most part, the City's recommendations are appropriate. He asked for clarification on the landscaping requirement.

Mr. Deegan stated the ordinance looks at the use of the adjacent property and because the use is residential, screening is required if this phase takes place.

Mr. Schrock stated there is not a lot of room in between the properties in which to place a landscape buffer and pointed out maintaining the buffer would require a lot of time. He went on to say he and Mr. Miller have both spoken with Dr. Kaeser and Dr. Kaeser's preference is that the space remain grassy area, noting he does not feel the additional landscape buffer would be of any benefit. He also questioned if additional trees would have to be planted along Main Street to meet B-1 landscape requirements. He asked if he is correct that parking lot landscaping is not required because they are not adding an additional 30 parking spaces.

Ms. Yoder responded that it is a total of 30 spaces added over time. She explained the B-1 landscaping requirements and pointed out that not meeting the landscaping requirements was not part of the application so it cannot be added now.

Mr. Schrock asked for clarification on amending the landscape requirements.

Attorney Kolbus stated they may proceed and at the time they do that development they can come back to the BZA asking to relax the landscaping requirements.

Ms. Yoder pointed out there is also flexibility with the location of streetside and parking lot landscaping and those items can be handled administratively by Staff without a public hearing. She agreed with Attorney Kolbus that they can proceed now and stated if they get to the point where a variance is required, they can apply at that time.

Mr. Schrock distributed handouts (Exhibit 18-14 #1 & #2) with a map of the site and photos of the Pine Manor property.

Mr. Schrock then asked the reason for connection to City water. He noted there are two functioning wells on the property, noting it will cost approximately \$20,000 to extend City water from the back side of the property. He pointed out when water was extended from Bethany School to the subdivision across the railroad tracks, it crossed the Miller Poultry property. He explained connecting to City water would not be a benefit at this time, but merely an expense.

Mr. Holtzinger asked if there is any requirement for fire suppression.

Mr. Schrock stated there is no requirement at this time, but noted future building additions will have to meet the building code which means fire walls and fire partitions. He stated it would be extremely difficult to add sprinklers to their existing buildings because they have been added on to multiple times and have different roof lines and heights. He asked the Board to take this into consideration, but if it remains a requirement, he asked that they be allowed to obtain the building permit prior to connection to City water.

Mr. Holtzinger asked if they have determined what the sequence is for this project.

Mr. Schrock stated Miller Poultry has three different operations. He explained that chicks are hatched at the Goshen location and then moved to farms to be raised. He explained they also provide all of the feed which is milled in New Paris, and then the birds are processed in Orland, IN. He went on to explain they have invested a large amount of money upgrading the other two facilities. In all likelihood they will begin with what is identified as Phase 3. He stated the phase which is considered most problematic is what they have identified as Phase 6, along the west side of the property.

Mr. Deegan stated if there is any development in those parcels, a subdivision will be required to ensure the residential character of the area is maintained. He pointed out that while this property is currently under the ownership of Miller Poultry, it might change hands at some point down the road. He noted the property owned by Dr. Kaeser might also change hands one day and because the variance stays with the property, those are important things to consider.

Mr. Deegan also addressed Staff's recommendation that they connect to City water, stating it is required by the Zoning Ordinance. He stated it had not been required previously because it had been overlooked in previous reviews.

Mr. Schrock asked the Board to consider his comments regarding the buffers and connection to City water. He also asked the Board to consider allowing the landscape buffer to the north to be delayed until the north building is constructed.

Mr. Deegan stated that is also what Staff intended.

Mr. Schrock asked if the landscaping would have to be installed if they built the parking area.

Mr. Deegan stated it would be required at that time. He also clarified that the commitment form is written that connection to City water could happen simultaneously as construction begins on the first phase.

Mr. Aguirre stated that previous approvals have been granted, but work has not been completed. He asked if this is approved today, would the work be completed within the timeframe provided.

Mr. Schrock stated Staff recommends no end date for the construction and he likes this proposal because they won't have to continue returning to the BZA for approvals. He understands they would still have to have Staff review, Technical Review, and obtain building permits anytime an addition is constructed. He stated it's doubtful all of this work would be completed within a five-year period.

*Audience Comments:*

Marty Long, 2804 S Main, spoke to the petition. He pointed out the only clear access to the Maple City bike path is through the area being discussed for landscaping. He felt it would be best to leave some of the landscaping requirements out.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre stated the Staff Report discussed the number of employees and amount of truck traffic, but he does not see this addressed in the recommendations.

Mr. Deegan stated Staff wanted to move away from items that are difficult to regulate and focus on things we can control through the Technical Review process.

Mr. Holtzinger stated he has concerns regarding the water. He asked if the business was allowed to continue without City water, at what point would they have to connect?

Ms. Yoder replied this is a requirement of the Zoning Ordinance.

Mr. Holtzinger asked if they would have to connect if they construct a new building.

Attorney Kolbus stated it might be required if the new building requires a fire suppression system.

Mr. Holtzinger asked for verification that the landscaping would be reviewed again when they're ready to develop the northern section of the property.

Attorney Kolbus stated that's when the requirement would become effective. He pointed out the same would be required for the property along the west side.

Mr. Ramer asked if the petitioner could request a variance at a later date if he does not want to install the landscaping as required.

Attorney Kolbus stated that if needed, a developmental variance could be requested later to relax the landscape requirements.

*Action:*

A motion was made and seconded, Aguirre/Ramer, to find with the recommendations and conclusions of the Staff Analysis and approve 18-13UV with the four conditions and eleven commitments listed in the Staff Report. The motion passed unanimously by a vote of 4-0.

**VII.** Audience Items:

None

**VIII.** Staff Board Items:

- 6-month extension request for 303 W Waverly, 18-03UV, from 9/27/18 to 3/27/19

Mr. Deegan explained Adam Scharf obtained a use variance on March 27, 2018, to allow an event center and a tourist home with two sleeping rooms in the primary residence. A zoning clearance form has been approved, but Mr. Scharf is awaiting permits from the Building Department and it is unclear if they will be issued before the

variances expire on September 27, 2018. A 6-month extension is requested to allow time for permits to be issued and so construction may begin.

*Action:*

A motion was made and seconded, Ramer/Holtzinger, to grant a six-month extension for 18-03UV, from 9/27/18 to 3/27/19. The motion passed unanimously by a vote of 4-0.

**IX.** Adjournment: 5:20 pm

Respectfully Submitted:

                  /s/ Lori Lipscomb                    
Lori Lipscomb, Recording Secretary

Approved By:

                  /s/ Tom Holtzinger                    
Tom Holtzinger, Chair

                  /s/ Richard Aguirre                    
Richard Aguirre, Secretary