

Minutes - Goshen Board of Zoning Appeals  
Tuesday, December 18, 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: Angela McKenna, Brad Hunsberger, Aracelia Manriquez, Richard Aguirre, and Tom Holtzinger. Also present was Assistant City Planner Rossa Deegan and Assistant City Attorney Jim Kolbus.

II. Approval of Minutes from 11/27/18: Aguirre/Hunsberger 5-0

III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Hunsberger/McKenna 5-0

IV. Postponements/Withdrawals: None

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

**18-15UV** – Peter F. Weddell and Karen L. Weddell request a use variance to allow the construction of a garage (accessory building) on a lot without a primary use (vacant lot with no residential dwelling), to be used for personal storage and a private hobby woodshop, where an accessory building is not permitted prior to a primary use. The subject property is generally located at 1307 S 9th Street (new address for parcel #20-11-15-309-015.000-015) and is zoned Residential R-1 District.

*Staff Report:*

Mr. Deegan explained that 1307 S 9<sup>th</sup> Street is a vacant parcel on the west side of 9<sup>th</sup> Street and surrounded by single and multi-family dwelling units. The request is to allow a garage to be built on the property without a primary residence. The garage would be used for storage and as a hobby workshop. He noted the garage is designed for a future house, but the petitioner is unsure when the house will be built. A use variance is required because the garage (accessory structure) would be built without a primary use (residence).

Mr. Deegan referred to a drawing provided to Board members, pointing out that the proposed garage would be located in the rear yard, on the western part of the property and will be accessed from the alley. This location will leave room for a future house to be built along the eastern portion of the property along 9<sup>th</sup> Street.

Mr. Deegan pointed out the proposed garage will be set back 64' from 9<sup>th</sup> Street and explained the adjoining property to the north contains three storage buildings with no residence. This property was granted a variance in 1995 for a third accessory building without a primary structure.

Mr. Deegan explained this proposed garage is designed with a bathroom and while the Staff Report states a bathroom is not permitted, the Engineering Department has approved the bathroom because a future house is proposed.

Staff considered the Comprehensive Plan when making their decision regarding this petition. Mr. Deegan noted one of the goals in the plan is for residential infill for vacant properties in residential areas, but also seeks development that matches the characteristic of the existing neighborhood. While Staff feels the proposed garage matches the characteristic of the neighborhood, the garage alone doesn't fit the vision of residential infill. Staff feels the garage would provide a stepping stone for a residence in the future and to ensure a house is built, Staff recommends that the next property owner should be responsible for constructing a house if one has not already been built.

Staff recommends approval of the variance with the listed conditions and commitments, which were read by Mr. Deegan.

*Petitioner Presentation:*

Pete Weddell, 2809 S Main Street, Goshen, spoke on behalf of the petitioner. He stated this garage will be used as a hobby shop and for inside storage, noting there will be no outside storage of any kind. Access will be located off of the alley. He stated he is a hobbyist and there will be no employees and no business hours, explaining that this will only be used by family members for their own hobbies. He stated all setbacks will be met so they will be able to eventually build the primary structure. He explained he is not interested in becoming a landlord and that's the reason they do not want to build the primary structure now. He stated this garage will not detract from the neighborhood and landscaping is planned for the property. He asked that the Board approve this request.

*Audience Comments:*

Brett Weddell, 2606 Salem Drive spoke in support of the petition. He explained this will be used for storage and as a hobby shop for himself, his father, brother and grandchildren. He stated he has concerns regarding commitment #5 from the Staff Report, which requires a dwelling unit to be built at the time the property is transferred to a new owner. He explained the property is owned by his father, but it's for family members to use. He stated when his parents are no longer around, he doesn't see any change of use for the property, pointing out if this commitment remains, a residence would have to be built if/when the property is transferred to him or his brother. He asked the Board to consider amending the commitment to allow transfer to a family member without the need to build a house on the property. He explained the main reason this structure is not being built on their property is because if/when the property is sold, this would be gone as well. The idea behind this is to allow family members a place to go to work on hobbies or to store items.

Mr. Weddell pointed out this is a vacant lot and having a garage on this property allows the City to get tax revenue from this property. He reiterated that with this garage, there will be no outside storage, but pointed out if a house is built on the property, there will be trash cans, vehicles, etc. on the property.

Mr. Holtzinger asked Mr. Weddell what he would consider a direct family member.

Mr. Weddell stated he would ask present legal counsel the best way to approach that, but pointed out the easiest way to address this would be to eliminate commitment #5 completely.

Attorney Kolbus suggested a direct family member could be defined as "bloodline family member of the applicant/owner".

Mr. Aguirre asked if the building will have utilities.

Mr. Weddell stated they intend to have in-floor heating so there will be no dust circulating throughout the building. They also want a flushable toilet there so they don't have to drive home to use the restroom.

Harold Smucker, 66217 US 33, also spoke in support of the request. He stated he also owns property at 615 S 9<sup>th</sup> Street. He stated Pete Weddell has always done more than what is asked of him and is confident the property will be well cared for.

Lanny Scott, 1405 S 15<sup>th</sup> Street, also spoke in support of the petition. He stated he owns the property next door and thinks this is a wonderful idea. He stated he will be happy to have them as neighbors.

Wilbur Hershberger, 716 Jackson Street, also spoke in support of the petition. He stated he owns a rental property adjacent to this property. He stated the property has already been cleaned up and while he has not seen plans for the new building, he has every confidence that the building will fit in with the surrounding neighborhood. He asked that the Board approve the variance.

Doug Nisley, 1929 W Lincoln Avenue also spoke in support of the petition. He stated he has known Pete Weddell for many years and everything he has done has benefited the City. He stated the property has been cleaned up and feels this will be well taken care of and will enhance the neighborhood.

Bobbie Peterson, 2000 Elkhart Road spoke in opposition to the petition. She stated she owns the property on the northwest corner of 9<sup>th</sup> and New York Street. She stated she somewhat approves of this request, but feels there are a few issues to be addressed. She pointed out the proposed house is anticipated to be smaller than the garage and feels the house should be larger than the garage. She also stated she feels a stipulation should be in place stating that a house must be built within three to five years because currently this is open ended and a house will never be built if it is allowed to be passed down to family members.

Mr. Holtzinger pointed out there is a shed on the property currently and if it is removed and a garage is built, the tax rate will go up.

Ms. Peterson stated that is true, but if there is an unlimited timeframe to build a house it will not be taxed at the higher rate. She pointed out the garages along 9<sup>th</sup> Street were constructed in 1995 and even though the yards are maintained, the garages are an eyesore. She pointed out that under the current proposal, this property will likely remain a lot with a garage only and no house.

*Rebuttal:*

Brett Weddell addressed Ms. Peterson's concerns. He stated they are members of the Woodworker's Guild and they are not permitted to sell any products. There will be no dust collectors on the property and no sales of any kind. He stated this will benefit the neighborhood and look nice.

Pete Weddell stated the house is proposed at 950sf, with a 60sf front porch. The garage is proposed at approximately 1,000 sf, but they're considering decreasing the width which would decrease the square footage.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Hunsberger asked Mr. Deegan to discuss the question regarding the square footage of the two structures.

Mr. Deegan explained the proposed home would be attached to the garage which would make the garage part of the primary structure. He went on to say that the total of all detached accessory buildings would have to be less than the total of the primary footprint. He also noted that as proposed, the future house and the garage would be less than the maximum 35% lot coverage.

Mr. Aguirre asked for clarification on the Engineering Department's approval of the proposed bathroom in the garage.

Mr. Deegan explained initial comments from the Engineering Department were that a bathroom would not be permitted in the accessory structure, but after the Staff Report had been prepared and distributed, the Engineering Department took into account that a future residence would be built on the property and approved the bathroom as requested by the petitioner.

Mr. Aguirre asked if they attached a timeframe for construction of the house.

Mr. Deegan stated they did not.

Mr. Aguirre pointed out if the property is allowed to remain within the family without a house being built, a house may never be constructed on the property.

Mr. Hunsberger noted the proposal of a future house seems to be a way to get this request approved. He went on to say if a future home had not been proposed, there would be no potential for a bathroom or for approval.

Mr. Deegan stated Staff's position was to take into account the Comprehensive Plan's vision to have a house on this vacant lot and that's why the commitment was added for a house to be constructed at some point.

Mr. Aguirre asked Mr. Deegan if he's aware of structures with similar uses in this neighborhood or elsewhere in the City.

Mr. Deegan stated people use garages all over town for things other than parking their cars, so having a garage with a few woodworking machines and storage crates didn't seem too unusual.

Ms. Manriquez asked what the structures immediately north are.

Mr. Deegan explained the three structures at the corner of 9<sup>th</sup> and New York Street are storage structures without a residence. He explained if a garage is built on the vacant parcel, it wouldn't particularly change the character of the neighborhood.

Mr. Aguirre questioned if a new owner could come back to the BZA to ask that the use on the property be allowed to continue without constructing a house.

Attorney Kolbus stated they always have the right to come in and ask that a variance be modified.

Mr. Deegan noted they could also come in and ask for an extension prior to a home being built.

Mr. Aguirre stated if a family member takes over ownership of the garage, he feels they should come back before the Board and ask that the current use be allowed to continue without the construction of a new home.

Mr. Hunsberger asked if the owner could put this into a trust so there would be no change of ownership going down the bloodline. That would also prevent the need for additional review by the Board.

Attorney Kolbus pointed out the transfer to a trust would be a new owner now.

*Action:*

A motion was made and seconded, McKenna/Manriquez, to find with the recommendations and conclusions of the Staff Analysis and approve 18-15UV with the six conditions and five commitments listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

VI. Audience Items:  
None

VII. Staff/Board Items  
None

VIII. Adjournment: 4:45 pm Hunsberger/Aguirre

Respectfully Submitted:

                  /s/ Lori Lipscomb                    
Lori Lipscomb, Recording Secretary

Approved By:

                  /s/ Tom Holtzinger                    
Tom Holtzinger, Chair

                  /s/ Richard Aguirre                    
Richard Aguirre, Secretary