

Minutes - Goshen Board of Zoning Appeals  
Tuesday, April 23, 2019, 4:00 p.m.  
Council Chambers, 111 E. Jefferson Street  
Goshen, Indiana

- I. The meeting was called to order with the following members present: Aracelia Manriquez, Richard Aguirre, Brad Hunsberger, Scott McKee, and Tom Holtzinger. Also present was Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus.
- II. Approval of Minutes from 3/26/19: Aguirre/Manriquez 5-0
- III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Manriquez/Aguirre 5-0
- IV. Postponements/Withdrawals: None
- V. **Developmental Variances** – public hearing item  
**19-06DV** – Bruce Cashbaugh, Deborah Domine, and Team Construction, Inc., request a developmental variance to allow a 1’ side yard (south) parking/driving aisle setback where 5’ is required for an expanded driveway. The subject property is generally located at 405 N Greene Road and is zoned Residential R-1 District.

*Staff Report:*

Mr. Deegan explained this lot was created as part of a two-lot subdivision in 1996. The lot has 80’ of frontage where a minimum of 66’ is required in the R-1 zoning district, meaning it has ample width for development. The Planning Office approved construction of a single-family dwelling on the vacant lot last year and the approved plans met all district requirements. It included an approximate 13’ side setback for the driving aisle along the south property line, which exceeds the five foot minimum required by the ordinance. He explained the approved driveway was 16’ 8” wide, noting the approved plan is included as Figure 1 in the packet distributed to Board members.

He explained that according to the petitioner, once construction began they realized that they would have to back out onto Greene Road, so the driveway was modified to include a three-point turnaround. This turnaround has a one foot setback from the south property line. According to the petitioners, they did not realize this was a zoning violation. The northern portion of the driveway was also narrowed in order to avoid cutting an existing tree. A drawing showing these unapproved changes is Figure 2 in the Staff Report.

According to the petitioners, even with these changes it’s difficult to maneuver a small car. When multiple visitors park in the driveway, the turn-around becomes unusable. Because of this, they propose adding additional surface within the setback which would match the setback of the existing turn-around. He referred Board members to Figure 3 in the Staff Report.

Staff analyzed previous requests, similar in nature to today’s, and found that the Board has approved encroachments into the parking and driving aisle setback on a number of occasions; however, those approvals were generally because additional parking spaces were proposed on lots with inadequate onsite or street parking for residents. This property has adequate parking and has ample room for a wider driveway without encroaching into the setback.

He noted that one variance was granted for a reduced front yard setback along Greene Road for a turn-around and as part of that approval, a commitment was added which requires the turn-around to be removed when the property is sold. He also noted that the approval was against Staff's recommendation.

Parking and driving aisle setbacks provide a buffer between properties. With a reduced setback, he pointed out plowed snow, stormwater runoff, and surface pollutants can enter adjacent properties. He noted this property has adequate frontage and the buffer can and should be maintained.

He advised Board members that no phone calls or comments have been received by the Planning Office, for or against, this request.

*Petitioner Presentation:*

Bruce Cashbaugh, 405 N Greene Road spoke on behalf of the petitioner. He explained that they recognized early on that backing out onto Greene Road is not safe and stated he doesn't know what the other option is that is being referred to. He stated that once the hole was dug for the house, they realized a mature hemlock tree would need to be removed, so in order to keep the tree, they redesigned the driveway with a three-point turnaround. He noted the three-point turnaround is barely adequate for a small car and that once someone is in the driveway there is no way to turn around and exit safely onto Greene Road. He explained that he appreciates the comment about runoff and snow removal, but he has spoken with his neighbor, Helen, three times and he stated that she is entirely comfortable with this. He noted that he cleared the driveway with his snow blower all winter and the snow did not come within ten feet of her house. He went on to say that even though there might be some runoff and some snow, it's not a situation his neighbor is concerned about, nor should she be. He asked the Board to approve this request.

Jeremy Tallman, Team Construction, 1849 W Lincoln Avenue, also spoke to the petition. He stated the proposed setback is one foot, eight inches, not one foot. He stated he was in the wrong for installing the turnaround, but was unaware of the five foot setback requirement. He stated that both Team Construction and the Cashbaugh's feel this would be the least invasive avenue for correction of this contractor mistake. He acknowledged there are probably other options, but they would be more invasive and ones that don't quite suit the ideal City landscape.

Mr. Holtzinger asked how often multiple cars are parked in the driveway.

Mr. Cashbaugh stated anytime someone comes over, possibly several times per week.

Mr. Holtzinger stated he drove down Greene Road a couple times this past week and over half of the properties on the same side of the street back out onto Greene Road.

Mr. Aguirre asked if either speaker would like to respond to anything else in the report.

Mr. Cashbaugh pointed out the only two properties affected are his and his neighbor to the south. He stated he would like to make sure it's understood he has discussed this with his neighbor and she is completely fine with this. He went on to say they don't want to remove the tree now and didn't want to remove it then.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre asked what the consequence would be for someone else that might see this design and decide they like this idea and want to do the same thing. What would the City do if it came to their attention?

Mr. Deegan asked if his question is assuming that this variance has been granted, to which Mr. Aguirre agreed.

Mr. Deegan stated if it were the same situation, a variance would be required. He noted the Board would need to make a decision once again, keeping in mind that a previous approval has set a precedent. He pointed out that all properties are different and there could be many variables in a future case,

Attorney Kolbus pointed all cases are unique and you are not bound by what you do today.

Mr. Aguirre asked if there is any way to determine if there are safety issues caused by backing onto Greene Road.

Mr. Deegan stated only if they were reported.

Mr. Hunsberger stated his issue with this request is the same as the case from approximately six months ago for the self-storage area that was designed wrong and they came back after the fact for permission for a fence on the right of way line.

Mr. Holtzinger stated when you look at the neighboring property, it sets back on the lot and you won't notice it's close to the property line. He went on to say if an exception is granted this time, a precedent is set for when another request comes forward. He also questioned how often there are additional cars in the driveway and if it's a significant amount of time.

Mr. Hunsberger pointed out they also made the decision to install a 12' driveway.

Mr. McKee questioned if would there be any discussion today if they had installed the 16 foot, 8 inch approved driveway. He also pointed out although the current neighbor is fine with this, it might become an issue with a future owner of the adjacent property.

Ms. Manriquez noted she supports Staff's findings.

*Action:*

A motion was made and seconded, Aguirre/Hunsberger, to find with the recommendations and conclusions of the Staff Analysis and deny 19-06DV with the findings listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**VI.** Audience Items:  
None

**VII.** Staff Board Items:

- *Six-month extension for 18-27DV, Clover Trails Sign*

Mr. Deegan explained this was a developmental variance, approved in November, 2018, for a freestanding sign in the median at the entrance of Mintcrest Drive and Plymouth Avenue. The sign company has advised they will submit a zoning clearance soon, but might need additional time past the six months granted by the BZA.

*Action:*

A motion was made and seconded, Hunsberger/Manriquez to grant a six-month extension for 18-27DV from May 27, 2019 to November 27, 2019. The motion passed unanimously by a vote of 5-0.

- *Revised Staff Report update*

Mr. Deegan stated that he appreciates the feedback he received last month regarding the Staff Reports. He explained he has begun including a notation in the Staff Reports describing any contact the Planning Office has had with neighboring property owners, but pointing out that the Planning Office might receive comments from the public after the Staff Report has been distributed. He noted this can be re-evaluated as necessary. He commented that he understands the comments from last month regarding the quality of photos on the BZA packets, noting this is something he will keep in mind, but pointed out the City has limited file space, so photos are reduced in size. He also explained that a comment was received last month asking if adjacent zoning could be addressed on the site map. He pointed to the aerial photo in today’s packet, showing Board members that the zoning is already included on site maps.

**VIII.** Adjournment: 4:22 pm Hunsberger/Holtzinger

Respectfully Submitted:

                  /s/ Lori Lipscomb  
Lori Lipscomb, Recording Secretary

Approved By:

                  /s/ Tom Holtzinger  
Tom Holtzinger, Chair

                  /s/ Richard Aguirre  
Richard Aguirre, Secretary