

Minutes - Goshen Board of Zoning Appeals  
Tuesday, May 28, 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 4/23/19: Aguirre/Hunsberger 4-0
- III.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Hunsberger/Aguirre 4-0
- IV.** Postponements/Withdrawals: None
- V. Developmental Variances – public hearing item**  
**19-07DV** – James and Karen Lindemulder and D & J Roofing & Construction request a developmental variance to allow a 7' side yard (south) building setback where 8' is required, for an approximately 12' x 20' (240 sf) garage addition. The subject property is generally located at 1822 Kentfield Way and is zoned Residential R-1PUD District.

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

*Staff Report:*

Mr. Deegan explained this is a single family residence, located in The Meadows of College Green. Planning records indicate this area was developed in the mid-1990's and at the time it was built, the home included a two car garage, along with an area for additional parking on the south side of the driveway. The petitioner's report that vehicles parked outside the garage have had the wiring destroyed by squirrels, and all attempts to prevent this have failed.

For this reason, the petitioners have proposed building a third garage stall on the south side of their property to protect their vehicles. He explained the proposed garage will have an overhang that will encroach approximately 1' into the required 8' setback, pointing out that none of the garage footprint will be located in the setback. Staff finds this encroachment reasonable and recommends approval of the request.

*Petitioner Presentation:*

James Lindemulder, 1822 Kentfield Way, spoke on behalf of the petitioner. He stated the squirrels are problematic and they have tried their best to get rid of them. He stated another neighbor built a similar garage without any neighbor concerns and they would like to do this as well.

*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/McKee, to find with the recommendations and conclusions of the Staff Analysis and approve 19-07DV with the three conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**19-08DV** – Lyman and Sherry Hug request a developmental variance to allow a pop-up camper to be parked on an existing cement pad in front of the front wall of the home during camping season, where campers are required to be parked behind the front wall of the home. The subject property is generally located at 404 Maple Court and is zoned Residential R-1 District.

*Staff Report:*

Mr. Deegan explained this property is a single-family residence in Crest Acres Subdivision and surrounded by other single-family residences. The petitioner's request is for a small pop-up camper, which is parked in front of the front line of the house during camping season. Campers are allowed to be parked on residential properties, but the zoning ordinance requires them to be parked behind the front line of the house. According to the petitioners, they have been parking a camper on the property off and on for approximately 35 years, explaining they store the camper off-site during the winter months.

Staff has confirmed that there is not enough space to park the camper behind the front wall of the home on either side of the property. The narrow side yards will also not allow the camper to be moved to the back yard. The petitioners have a concrete pad on the north side of the property where the camper can be parked without blocking the garage. He noted that Staff has confirmed through aerials that a camper has been parked on the property since at least 2003 and finds no record of any complaints.

While Staff feels this property warrants an approval of the request, it's felt there should be limitations as included in the Staff Report. Staff recommends approval of the request with conditions and commitments.

*Petitioner Presentation:*

Sherry Hug, 404 Maple Court, spoke on behalf of the petitioner. She stated she is familiar with the Staff Report and has nothing to add.

*Audience Comments:*

Edward Chamberlain, 1502 James Place spoke in support of the petition. He stated the popup camper is well taken care of and is not a problem.

*The public hearing was closed.*

*Staff Discussion:*

There was no discussion amongst Board members.

*Action:*

A motion was made and seconded, McKee//Manriquez, to find with the recommendations and conclusions of the Staff Analysis and approve 19-08DV with the three conditions and two commitments listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**19-09DV** – Wal-Mart Stores and TNT Fireworks request a developmental variance to permit outside sales and display of merchandise (fireworks) from June 21, 2019 to July 6, 2019 where outside sales and display of merchandise is not permitted except by permission of the BZA for a limited time. The subject property is generally located at 2304 Lincolnway East and is zoned Commercial B-4 District.

*Staff Report:*

Mr. Deegan explained this request is to allow the outside display and sales of fireworks in the Wal-Mart parking lot on Lincolnway East. The property is zoned Commercial B-4, which is the zoning for planned shopping centers and outside display and sales is permitted when approved by the BZA. He explained this request was originally presented to the BZA in May, 2014 and approval was granted for a ten year period. Wal-Mart's corporate office would not sign the required commitment form because they do not support multi-year agreements. For this reason, the petitioners have returned to the BZA and have received approval each year between 2015 and 2018. With the exception of the dates and size of the tent, this request is the same as previous years. This year's request is to allow outside sales and display from June 21, 2019 through July 6, 2019, between the hours of 10:00 am and 10:00 pm daily. The tent is approximately 30' x 40' and will displace approximately 12 parking spaces.

The Planning Office has no record of any issues with sales from previous years and the area where the tent is located is often unused for parking. Staff recommends approval of this request.

*Petitioner Presentation:*

Rachel Roos, TNT Fireworks, Marion, IN, spoke on behalf of the petitioner. She stated this has been a fundraiser for an area church for several years and as part of their agreement, they are responsible for keeping the parking lot clean. No smoking and no shooting of fireworks is permitted onsite.

*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/McKee, to find with the recommendations and conclusions of the Staff Analysis and approve 19-09DV with the five conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**19-10DV** – Dennis & Cynthia Miller and Blue Diamond Communities request developmental variances to allow a 0' side yard (west) setback at 1614 Autumn Blaze Lane, and a 0' side yard (east) setback at 1626 Autumn Blaze Lane, for an approximately 8' x 10' (80 sf) patio located at 1614 Autumn Blaze that encroaches approximately 4' onto 1626 Autumn Blaze Lane. The subject properties are zoned Residential R-3 District.

*Mr. Hunsberger recused himself from hearing this petition at 4:15 p.m.*

*Staff Report:*

Mr. Deegan explained these two properties are adjacent to each other, located in Maplewood Estates. He explained that 1614 Autumn Blaze is the smaller of two properties and contains a single-family residence, built within the past 18 months. This development is on Lot 19-B and the east half of Lot 19-A. He referred to Figure 1 in the Staff Report which shows the site plan approved by the Planning Office on October 3, 2017.

1626 Autumn Blaze is a twelve unit, assisted care facility, which has been built on multiple lots, including the west half of Lot 19-A. He explained assisted care facilities are a conditional use in the R-3 zoning district and it received approval from the BZA in 2016 because as proposed, the facility was closer than 1,000 feet to a similar facility. A developmental variance was also approved for a 6' rear setback where 25' is required. He pointed out the BZA also denied part of the request which would have allowed 12 units in the facility because at the time the

property did not have enough land. Following the BZA decision, the property owner used the west portion of Lot 19-A to meet the density requirement, allowing the 12 units.

The owners of 1614 Autumn Blaze placed a patio on the side of their home, stating they were unaware that Planning review was required. They also stated they did not know they encroached into the six foot setback or that they were four feet onto the neighboring property. He referred to Figure 2 in the Staff Report which shows the approximate location of the expanded patio.

Mr. Deegan stated that in order for the patio to remain, the owners now request a variance to allow a zero foot setback for the patio where six feet is required. The neighboring property at 1626 Autumn Blaze also requires a variance to allow a zero foot setback where 5' is required. The 5' setback for 1626 Autumn Blaze is based on an accessory setback while the setback for 1614 Autumn Blaze is 6' because it is part of the primary structure.

Mr. Deegan noted that the owner at 1626 Autumn Blaze discovered the encroachment while landscaping. They advised Staff that they are comfortable with the encroachment because of the way it looks and because there will be landscape screening between the patio and the care facility.

Mr. Deegan stated the Planning Office has several concerns regarding the patio. The zero foot setback eliminates the buffer along the south property line and Staff has concerns about future development. The encroachment onto 1626 Autumn Blaze also reduces the lot size which could impact the care facility's ability to meet the density requirement. He noted it's a concern that future owners of the 1614 Autumn Blaze property might seek to purchase more of Lot 19-A without the Planning Department's knowledge or approval. If that were to happen, the care facility would no longer be in compliance with the Zoning Ordinance.

For these reasons, Staff recommends denial of the requested variance. He added that if the variance is denied, the portion of the patio installed without approval should be removed from both properties within 30 days of the Board's decision.

*Petitioner Presentation:*

Tonya Detweiler, 1630 Timberline Drive, spoke on behalf of the petitioner. She stated she is the owner of the care facility at 1626 Autumn Blaze Lane. She stated her architect advised that they needed 19.5' of Lot 19-A in order to meet the density requirement, explaining that to make it simpler the lot was split down the middle, with the other half sold to the owners of 1614 Autumn Blaze. She stated this will still allow them to be in compliance. She also pointed out the 15' stormwater easement there provides a nice buffer between the two properties. She explained that while the patio has a zero foot setback, it appears as a nice side yard.

Ms. Detweiler stated she supports this variance request, noting she is still able to meet the density requirement.

Cynthia Miller, 1614 Autumn Blaze Lane also spoke to the petition. She stated she was unaware of the location of her property lines, noting the underground sprinkler system she had installed was also incorrect and that some of the corrections have been expensive. She asked that the Board approve this request.

Mr. Holtzinger asked if it might be a problem in the future when she's ready to sell this property and the patio is partially located on someone else's property.

Ms. Miller agreed that this might present a problem. She asked if the Board would approve the patio up to the property line if they are not willing to approve the encroachment into the care facility property.

Attorney Kolbus stated the Board could grant an easement to her to permit the patio encroachment.

Ms. Detweiler stated they are willing to grant the easement if that is an option.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre asked if an approval could be granted contingent on an easement being granted by the owners of 1626 Autumn Blaze.

Attorney Kolbus agreed this could be granted as part of a commitment for the property.

Mr. Aguirre asked if Mr. Deegan had considered this possibility in his analysis.

Mr. Deegan stated he has no calculations to verify that 1626 Autumn Blaze could still meet the density requirements. He reiterated that he still has concerns.

Mr. Holtzinger asked Attorney Kolbus if an easement can be for a specific section of the property.

Attorney Kolbus stated that yes, that would be allowed.

Mr. Holtzinger asked if this item should be tabled until it's known if the conditions can be met.

Attorney Kolbus stated that would be an option, but the Board would have to let Staff know exactly what information is being requested from the petitioner.

Mr. McKee stated if calculations are provided to Staff verifying they can meet the density requirements, he would support this since the neighbors are here and willing to grant the easement.

*Action:*

A motion was made and seconded, Aguirre/McKee, to accept the finding of the Board and approve 19-10DV with the following conditions and commitments:

*Conditions:*

1. The variance is granted for a period of six (6) months, and shall become null and void unless a zoning clearance form has been issued within six (6) months of the date of approval.
2. Deviation from the requirements and conditions of the variance may result in the cancellation or termination of the approval or permit.
3. The BZA approval shall be effective when the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen BZA staff and when all conditions of approval have been met.
4. No zoning clearance form will be issued until the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen BZA staff and until all conditions of approval have been met.
5. A zoning clearance form is required for the patio.

*Commitments:*

1. The approval is for an approximately 8' x 10' (80 square foot) patio (cement slab) only.
2. An easement shall be executed and recorded for the portion of the patio encroaching onto 1626 Autumn Blaze Lane.
3. A copy of the executed and recorded easement shall be provided to the Planning office before a zoning clearance form is issued.
4. 1626 Autumn Blaze Lane shall continue to meet the density requirement, building coverage requirement, and all other Residential R-3 use and developmental requirements other than those relaxed as part of 16-23UV & 16-32DV.

The motion passed unanimously by a vote of 4-0

*Mr. Hunsberger rejoined the meeting at 4:28 pm.*

**19-11DV** – Dairy Farmers of America, Inc. requests developmental variances to allow a 17' front yard (north) building setback along Burdick Street where 30' is required, and a 49' building height where 35' is allowed, for

an approximate 25' x 57' containment structure with three wastewater treatment silos. The subject property is generally located at 1110 S 9<sup>th</sup> Street and is zoned Industrial M-1 District.

*Staff Report:*

Mr. Deegan explained the petitioner proposes building a wastewater containment structure on the property, requiring a developmental variance to allow a 17' setback where 30' is required along Burdick Street and to permit a height of 49' where a maximum height of 35' is allowed. The proposed structure is in response to a notice of violation received from the City involving the discharge of wastewater into City sewer, which requires different treatment from sanitary wastewater. Mr. Deegan described the structure as approximately 1,425 sf, enclosed by a 3 foot, 3 inch wall and includes three large tanks. These tanks are depicted on page 10 of the Staff Report. He noted that a letter is also included in the packets from the Director of Public Works supporting this request.

Mr. Deegan pointed out that the proposed structure will match existing property and area development, the proposed tanks are shorter than existing tanks on the property, and the 17' setback along Burdick Street is greater than the setback for much of the existing facility. Staff recommends approval of the request.

*Petitioner Presentation:*

John Brown, 1110 S 9<sup>th</sup> Street, spoke on behalf of the petitioner. He stated Mr. Deegan explained the request well, noting they are trying to help the City. He went on to say the wastewater restrictions upon them makes this challenging explaining they are trying to separate out their process wastewater from their sanitary wastewater.

Mr. Aguirre asked if this will enhance operation or capacity in any way.

Mr. Brown stated no, but it will help them to help the City. He explained they have been discharging directly to the sewer since they began operation and because their pH is currently outside the acceptable range, they're trying to get that back into range.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre asked what impact this will have on the wastewater treatment facility.

Mr. Deegan stated it's his understanding that this will help alleviate some of the burden on the wastewater facility.

*Action:*

A motion was made and seconded, Aguirre/Hunsberger, to find with the recommendations and conclusions of the Staff Analysis and approve 19-11DV with the three conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**19-12DV** – Elijah's Fire International Church and The Vine Church request a developmental variance to amend 10-28DV to remove its four conditions, which approved a site plan with approximately 5,500 square feet of church space, limited the number of parishioners at any one service to 150, and limited church service hours to 7:00 pm on Wednesdays and 10:00 am and 6:00 pm on Sundays. The subject property is generally located at 2616 Peddlers Village Road and is zoned Commercial B-3PUD District.

*Staff Report:*

Mr. Deegan explained this property is the Mega Plaza building in Peddlers Village PUD, which is a mix of various commercial businesses. He explained the Mega Plaza building is the largest building in the PUD, noting that Planet Fitness is located in the building which uses less than half of the space.

Today's request is to remove the conditions of variance 10-28DV which allows the building to be used as a church. He noted that churches are a conditional use in all zoning districts and when all conditions are met, they are approved administratively. He explained that churches must maintain a 50' setback from residential zoning and uses, which this building could not meet. He noted the southwest corner of the building is located 35' from a multi-family housing complex, zoned Residential R-3.

The 2010 BZA approval adopted Staff's recommendations which included several conditions. He explained the site plan submitted at that time showed a 5,500 sf area in the rear of the building which was to be used for church space. At that time, Staff also recommended limiting the number of parishioners to 150, and limiting hours to 7:00 pm on Wednesdays and 10:00 am and 6:00 pm on Sundays.

Today's petitioners would like to use the building more intensely than previously allowed. Plans include renovating the church to allow up to 450 parishioners. They would also like to remove the limited hours allowed with the previous variance and state they will meet all parking requirements through private agreements. They advised that they will also provide copies of those agreements to the Planning Office.

After review, Staff feels the 2010 conditions were ill advised, pointing out they were based upon information received from the applicants at the time. He noted that when churches meet the conditions and are approved administratively, no constraints are placed on their use. He also pointed out the sanctuary and Sunday School rooms are proposed in the west portion of the building which would be approximately 150' to the residential property to the south.

Staff recommends approval of the request.

*Petitioner Presentation:*

Bill Rice, 58075 Goldenrod Trail, Goshen, spoke on behalf of the petitioner. He stated they want to make this building look nice and help out the community. He noted they have a construction team looking at it now and they intend to make it look good inside and out.

Mr. Holtzinger noted the anticipated parishioners will be 450 and asked if the building would hold more people than that.

Mr. Rice stated that's the plan for now, but they're also working on finding available parking to allow them to do what they want to do. He stated they can handle parking for 450 people.

Mr. Aguirre asked how many parking spaces they have available to them now.

Mr. Rice stated approximately 375 and they're working on getting another 75 spaces.

*Audience Comments:*

Philip Straw, 64711 Apple Ridge Road, Goshen spoke in opposition to the petition. He stated he owns most of the property within the Peddler's Village Shopping Center and stated that his concern with this request is because of the parking. He noted that Sundays are not a problem, but does have concerns about parking for Saturday events. He noted that the Planet Fitness franchise requires a minimum of 100 parking spaces and he has a 10-year lease agreement with them to provide 100 parking spaces in front of their building. He also noted an event center adjacent to the church has between 300-400 people every Saturday for various events, questioning if there are enough spaces for the church to also hold events. He noted while there are a lot of parking spaces, parking could be an issue at certain times.

*Petitioner Rebuttal:*

Mr. Rice stated the parking in front of the Mega Plaza, including Planet Fitness, belongs to Choice One and that's who they are working with on an agreement. He explained the church use would mainly be on Sunday and there are no big church meetings during the week. He stated they will likely have weddings, noting they have had two this year. He commented that perhaps this is something that could be coordinated with the event center and that they could possibly use the event center space instead of their church for weddings. He stated they are willing to work with everyone to come up with an acceptable plan.

Mr. Deegan stated that the Planning Office has not approved their interior plan at this point and it will be approved administratively. If their proposal cannot meet parking requirements, the Planning Office will not grant the conditional use permit. He pointed out the request before the Board is to remove a couple conditions from a previous variance. He went on to say they will need to provide the agreements they have for the parking so we can confirm that parking requirements are met.

*The public hearing was closed.*

*Staff Discussion:*

There was no discussion amongst Board members.

*Action:*

A motion was made and seconded, Hunsberger/McKee, to find with the recommendations and conclusions of the Staff Analysis and approve 19-12DV with the three conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

**VI.** Audience Items:  
None

**VII.** Staff Board Items:

Mr. Aguirre asked about the possible appeal for the case that was denied by the Board at the April meeting.

Mr. Deegan stated the appeal period is 30 days after the decision and Staff has not received any notice of an appeal.

Mr. Holtzinger stated he thought the tree in question had been removed.

Mr. Deegan stated Staff has confirmed that the tree has been removed, along with a portion of the drive.

**VIII.** Adjournment: 4:56 p.m. 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