

Minutes - Goshen Board of Zoning Appeals  
Tuesday, April 28, 2020, 4:00 p.m.  
Council Chambers, 111 E. Jefferson Street  
Goshen, Indiana

**I.** The meeting was called to order with the following members present via electronic communication: Aracelia Manriquez, Allan Kauffman, Richard Aguirre, and Scott McKee. Member Tom Holtzinger was physically present, along with Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus. Absent: none

Mr. Deegan read the following emergency meeting notice:

We begin this meeting during a declared public health emergency covering all of the State of Indiana. Board members Aracelia Manriquez, Allan Kauffman, Richard Aguirre, and Scott McKee are participating in this meeting by electronic communication pursuant to Governor Holcomb's Executive Orders 20-04 and 20-09, and guidance from Indiana Public Access Counsellor Luke Britt. Board member Tom Holtzinger is physically present in City Council Chambers as we begin this meeting.

Mr. Deegan advised because some Board members are participating via electronic communication, all votes must be roll call votes, including those for approval of the minutes, and filing ordinances and reports into record.

**II.** Approval of Minutes from 3/24/20: A motion was made and seconded, Aguirre/McKee, to approve the minutes as presented with the following outcome: Manriquez, yes; Kauffman, yes; Aguirre, yes; McKee, yes; Holtzinger, yes. The motion passed unanimously by a vote of 5-0.

**III.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: A motion was made and seconded, Aguirre/Kauffman, to accept the Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record with the following outcome: Manriquez, yes; Kauffman, yes; Aguirre, yes; McKee, yes; Holtzinger, yes. The motion passed unanimously by a vote of 5-0.

**IV.** Postponements/Withdrawals: None

**V.** **Developmental Variances** – public hearing item

**20-06DV** – Wal-Mart Stores and TNT Fireworks request a developmental variance to permit outside sales and display of merchandise (fireworks) from June 20, 2020 to July 5, 2020 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 the location for this request is the Walmart on Lincolnway East and the request is to allow outside display and sale of fireworks. He explained this request was originally presented to the BZA in 2014 and approved by the BZA for a 10 year period. A commitment form was required and Walmart corporate would not sign the form, stating they do not support multi-year agreements. For this reason, the petitioners must return annually for approval. He noted that this request has been approved each year following the 2014 approval.

Mr. Deegan noted that the terms of approval are nearly identical to previous years. He gave dates and times for this year's fireworks sales and remarked that the Planning Office has not received negative comments from previous sales.

*Petitioner Presentation:*

Rachel Roos, TNT Fireworks, Mishawaka, IN, spoke on behalf of the petitioner. She stated they have been here for 12 years and this location is one of their highest selling locations in Indiana. This is used as a fundraiser for the local Pentecostal Church.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre stated that he appreciates Staff's attempt to grant this request for a longer period of time. He asked if the applicant is required to pay a filing fee each year since Walmart won't enter into a multi-year agreement.

Mr. Deegan stated this is a developmental variance and yes, a fee is paid each year.

Mr. Aguirre asked if City expenses are covered by the fee.

Mr. Deegan stated he doesn't know that answer.

Mr. Kauffman asked if Walmart would agree to a multi-year agreement if it said Walmart must give permission annually.

Mr. Deegan stated that Walmart does not support multi-year agreements.

Mr. Holtzinger agreed with Mr. Deegan's comments, noting this has been discussed before.

*Action:*

A motion was made and seconded, Aguirre/McKee, to find with the recommendations and conclusions of the Staff Analysis and approve 20-06DV with the three conditions listed in the Staff Report. A roll call vote was requested with the following outcome: Manriquez, yes; Kauffman, yes; Aguirre, yes; McKee, yes; Holtzinger, yes. The motion passed unanimously by a vote of 5-0.

**VI.** Audience Items:  
None

**VII.** Staff Board Items:

Mr. Aguirre asked when the governor's current executive order regarding Zoom meeting expires.

Attorney Kolbus stated its his understanding it expires on May 4<sup>th</sup>.

Mr. Aguirre asked if the order would need to be extended in order for Zoom meetings to continue. He also asked if there is any public notice requirement if public hearings continue as Zoom meetings.

Attorney Kolbus stated if the governor doesn't renew the order, there is nothing in the current law that allows us to continue the Zoom meetings.

**VIII.** Adjournment: 4:13 pm Kauffman/Aguirre

Respectfully Submitted:

/s/ Lori Lipscomb  
Lori Lipscomb, Recording Secretary

Approved By:

/s/ Tom Holtzinger  
Tom Holtzinger, Chair

/s/ Richard Aguirre  
Richard Aguirre, Secretary