

Minutes - Goshen Board of Zoning Appeals
Tuesday, November 24, 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: Allan Kauffman, Aracelia Manriquez and Richard Aguirre. Member Tom Holtzinger was physically present, along with Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus.

II. Assistant Planner Rossa Deegan read the following statement: We begin this meeting during a declared public health emergency covering all of the State of Indiana. Board members Richard Aguirre, Allan Kauffman and Aracelia Manriquez are participating in this meeting by electronic communication pursuant to Governor Holcomb's Executive Orders 20-04, 20-09 and 20-47, as well as guidance from Indiana Public Access Counsellor Luke Britt. Board member Tom Holtzinger is physically present in City Council Chambers as we begin this meeting.

Assistant Planner Rossa Deegan reminded members that because some board members are participating via electronic communication, all votes must be roll call.

III. Approval of Minutes from 10/27/20: A motion was made and seconded, Kauffman/Aguirre, to approve the 10/27/20 minutes as presented with the following outcome: Aguirre, yes; Holtzinger, yes; Kauffman, yes; Manriquez, yes. The motion passed unanimously by a vote of 4-0.

IV. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: A motion was made and seconded, Kauffman/Manriquez, to file the Zoning/Subdivision Ordinances and Official Staff Reports into Record with the following outcome: Aguirre, yes; Holtzinger, yes; Kauffman, yes; Manriquez, yes. The motion passed unanimously by a vote of 4-0.

V. Postponements/Withdrawals - None

VI. Use and Developmental Variances – public hearing items

20-21DV – Eli Schlabach requests a developmental variance to allow a 6' front yard setback for a parking/driving aisle where 25' is required, and open parking spaces in the front yard setback, for a 6' x 29' concrete parking area. The subject property is generally located at 509 Glenwood Drive and is zoned Residential R-1 District.

Staff Report:

Mr. Deegan provided a brief summary of the Staff Report, stating this is a single family property surrounded by single family properties, a one story house with a one-car garage. The request is to widen the driveway, which meets the side setback, but does not meet the front setback and creates an open parking space. Mr. Deegan recommended approval, as there are other properties in the neighborhood with open front yard parking. Mr. Deegan said one inquiry was received from the property to the north, asking for clarification of the request.

Petitioner Presentation:

Eli Schlabach, 509 Glenwood Drive, Goshen, stated he was parking at the end of the driveway, where there is now no parking, and has been parking on the street, and has had his vehicle hit while parked on the street. He stated the expanded driveway will not impact the property to the north.

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, Kauffman/Aguirre, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 20-21DV with the conditions listed in the Staff Report. A roll call vote was

requested with the following outcome: Aguirre, yes; Holtzinger, yes; Kauffman, yes; Manriquez, yes. The motion passed unanimously by a vote of 4-0.

20-22DV - Alma Rocio Carreon requests a developmental variance to allow a 5' side (south) setback where 10' is required for a 12' wide gravel driving aisle and turnaround. The subject property is generally located at 810 S Indiana Avenue and is zoned Agricultural A-1 District.

Staff Report:

Mr. Deegan explained this request is the final step in a compliance process to resolve a driveway installed without approval. He said the Board of Works has approved the gravel surface. Mr. Deegan recommended approval, stating the proposed setback is in keeping with residential standards. He said the Planning office has been in contact with two adjacent owners over the course of the compliance process.

Petitioner Presentation: The petitioner, Alma Carreon, spoke through translator Sharon Hernandez, and said she had nothing to add, and that everything is accurate.

Audience Comments:

Todd Miller, 830 Walden Lane, Goshen, said he is the adjacent property that was encroached upon. He said the approval is backward, and suggested the BZA should not approve until repairs have been made to his property. He said he had a survey done, and the neighbors have already taken down a property stake. He said as of this morning they were still parking on his property. He said the drawing doesn't show the parking area that has been installed on the east side of the garage. He said he doesn't have a problem with approving the setback, but it should be after repairs are made to his property.

Mr. Holtzinger asked what damage has been done to his property, and Mr. Miller said the drive was installed on his property, sod was installed along the edge that has died, and there was fill added at the front of the property. Mr. Miller said so far they have removed logs, but dirt and sod needs to be removed from his property, and other than the logs being removed he hasn't been much change. He said he wants his property repaired as it was.

Mr. Holtzinger asked if there was a way to do both together, and Mr. Deegan said the fourth condition states gravel not approved as part of the variance would need to be removed. Mr. Miller said it is not just the gravel that is the issue. He said the height of the property has been changed at the front and as a result he can't mow or take care of it. He said he wants leverage to be sure his property is repaired.

Mr. Kolbus said if the variance is approved and conditions of approval are not met there would be two courses of action. One would be to bring back to the BZA and revoke the approval, or turn over for court enforcement.

Mr. Aguirre asked Mr. Miller how many conversations he has had with the neighbors and if they've been receptive. Mr. Miller said he has talked with them three times and they have been receptive, but no action has been taken. Mr. Miller said the neighbors told him all their help had gone back to Mexico so there was no one to help fix it.

Mr. Kauffman said not to grant until in compliance seems punitive and will likely delay the process. Mr. Miller said he has no problem with the driveway. His only concern is restoration of his property. Mr. Kauffman said approving could result in a faster course of action. Mr. Miller said he is ok with approval if the City takes on the enforcement.

The translator, Sharon Hernandez, provided a summary of the discussion for the petitioner, and then stated the petitioner agrees to leveling the property, planting grass, and working on moving gravel off. Mr. Kauffman said the grass can be planted earlier than June.

Mr. Aguirre asked the petitioner when they were aware the drive was on the neighbor's property, if they have had continued conversations, if they are willing to do what he is asking, and if they are aware they will face action by the City if not restored, and the petitioner, through the translator, said they became aware when the neighbor notified her, about two months after she bought the property, they have talked a couple of times, yes they are willing to do what is being asked, and yes they are aware they may face action.

The public hearing was closed.

Staff Discussion:

Mr. Aguirre asked about adding language to the conditions to cover full restoration, and Mr. Kolbus said such language should be added.

Action:

A motion was made and seconded, Aguirre/Holtzinger, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 20-22DV with the conditions listed in the Staff Report, plus a condition that the adjacent property at 830 Walden Lane shall be restored to the conditions that existed prior to being disturbed by the unapproved drive, no later than June 1, 2021. A roll call vote was requested with the following outcome: Aguirre, yes; Holtzinger, yes; Kauffman, yes; Manriquez, yes. The motion passed unanimously by a vote of 4-0.

20-12UV & 20-23DV – AJJM, LLC and Abonmarche Consultants request a use variance to allow Commercial B-3 uses where Industrial M-1 uses are permitted, and developmental variances to amend 12-08DV to allow partial landscaping along Kercher Road where full landscaping is required adjacent to residential use and a 25' front parking/driving aisle setback where 35' is required for an approximately 38' x 243.5' tract of land in addition to what was originally approved, and to allow one illuminated monument sign and illuminated wall signs where illuminated signs are not permitted adjacent to residential use. The subject property is generally located at 1021 E Kercher Road and is zoned Industrial M-1 District.

Staff Report:

Mr. Deegan said this is a 1.6-acre property, zoned M-1, with residential across Kercher Road. The property is Lot 3 of Parke North subdivision, plus an additional 38' to the east. The first part of the variance is an amendment to a prior variance already in place for Lot 3, for landscaping and a setback, that would apply to the added 38' feet. Mr. Deegan said partial landscaping is appropriate because the proposed use is commercial. The partial landscaping is what would be required/allowed if the zoning of the property was commercial. He said there is a 90' right of way between the subject property and the residential to the south, and he recommended approval of the amendment.

Mr. Deegan said the second part of the variance is for the commercial uses, proposed in a three-unit building, and he recommended approval, as the location would serve commercial needs of people working in the surrounding industrial areas.

Mr. Deegan said the third part is for the illuminated signs, and he recommended approval based on the 90' of right of way with two travel lanes, a turn lane, and a bike path. Mr. Deegan said the signs on Lot 2 are illuminated, as allowed at the time Lot 2 was developed.

Mr. Deegan said the Planning office was contacted by one person who had concerns about noise and lighting.

Petitioner Presentation:

Crystal Welsh, Abonmarche Consultants, 1009 S 9th Street, Goshen, spoke on behalf of the petitioner. She said the narrow strip to the east is needed to provide a driveway. She said B-3 uses are compatible to what is in the area, and said this is a local owner.

Mr. Aguirre asked if they have tenants in mind, and Fred Ham, Schrock Commercial, Goshen, said they have a bakery interested in the drive-through portion of the building. Mr. Aguirre asked about three high traffic uses, and Mr. Ham said they would not put in three restaurants, but perhaps one restaurant and two professional office spaces.

Audience Comments:

John Bruhn, 1002 E Kercher Road, Goshen, said he has lived there 40 years. He said they don't need illuminated signs and he is not in favor of partial landscaping. He asked what access is proposed.

Mr. Holtzinger asked if there are issues with the gas station, and Mr. Bruhn said yes, mainly early in the morning. He said there is high acceleration out of the site and there is trash everywhere. Mr. Holtzinger asked if the light from the signs comes onto his property, and Mr. Bruhn said no.

William Morelock, 902 E Kercher Road, Goshen, said he lives on the corner directly across from the gas station. He said he spoke against the partial landscaping for the gas station. He said he can walk out of his garage and see everything. He said the neighbors see headlights all night long. He said there are burn outs constantly, and he has to wait 20 to 30 minutes to get out of his drive. He said there is no crosswalk for kids. He said he is against illuminated signs and is against adding more development, which makes it more dangerous for the residential neighborhood. He said they don't deserve this.

Mr. Holtzinger asked if full landscaping would solve his problems, and Mr. Morelock said yes, and closing at 11 pm.

Crystal Welsh responded to the comments, and explained no additional access is proposed, as the new commercial development will use the existing drive. She said the partial landscaping variance applies only to the added 38 feet, as a variance for partial landscaping is already in place for Lot 3. Ms. Welsh said lighting will be reviewed in the Technical Review process, and a photometric plan will be submitted.

Mr. Aguirre asked if the same hours as Lot 2 for operation and sign illumination would work, and Mr. Ham said 5 am to 11 pm would be ok for operation and sign illumination.

Mr. Kauffman asked Mr. Deegan if there is room for full landscaping, and to explain the difference between partial and full landscaping. Mr. Deegan said only 38' would be full landscaping, and full landscaping requires a berm and denser trees, with partial landscaping having no berm and slightly fewer trees.

The public hearing was closed.

Staff Discussion:

Mr. Kauffman asked the petitioner about other options if the variance is denied, and Mr. Ham said the property is zoned Industrial M-1 and could be manufacturing. Mr. Kauffman said he understands concerns, but would rather look at retail than a factory.

Action:

A motion was made and seconded, Kauffman/Holtzinger, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 20-12UV and 20-23DV with the conditions listed in the Staff Report. A roll call vote was requested with the following outcome: Holtzinger, yes; Kauffman, yes; Manriquez, yes. The motion passed unanimously by a vote of 3-0.

Note for the Record: Mr. Aguirre was absent from the meeting for a few minutes due to a power outage.

20-24DV – Timothy D. and Amanda A. Wagner request a developmental variance to allow a 23' front yard (north) setback for a parking/driving aisle where 35' is required, and open parking spaces in the front yard setback for a 20' x 25' concrete parking area. The subject property is generally located at 1800 Bashor Road and is zoned Residential R-3 District.

Staff Report: Mr. Deegan explained the request and said the area was installed without approval, as the owner was unaware of requirements and was misled by the contractor. Mr. Deegan recommended approval, as there are other similar properties in the area.

Petitioner Presentation: Timothy Wagner, 1800 Bashor Road, Goshen, apologized for installing without approval, and said it was an honest mistake.

Audience Comments: There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Aguirre asked if there have been any concerns from neighbors, and Mr. Wagner said no. He said they have spoken to several neighbors who support the request.

Mr. Kauffman said if no neighbors object and they aren't adversely impacted, it would be an undue hardship to require removal if it would probably have been approved if the variance had been requested prior to installation.

Action:

A motion was made and seconded, Kauffman/Holtzinger, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 20-24DV with the conditions listed in the Staff Report. A roll call vote was requested with the following outcome: Aguirre, yes; Holtzinger, yes; Kauffman, yes; Manriquez, yes. The motion passed unanimously by a vote of 4-0.

VII. Audience Items - None

VIII. Staff Board Items:

- 2021 BZA Calendar - Mr. Deegan noted for the record that the 2021 BZA calendar was provided.

IX. Adjournment: 5:17 pm

Respectfully Submitted:

/s/ Rhonda Yoder

Rhonda Yoder, Recording Secretary

Approved By:

/s/ Tom Holtzinger

Tom Holtzinger, Chair

/s/ Richard Aguirre

Richard Aguirre, Secretary