

Minutes - Goshen Board of Zoning Appeals
Tuesday, March 23, 2021, 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: Richard Aguirre, Michael Potuck, and Lee Rohn. Member Aracelia Manriquez was physically present, along with Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus. Absent: Tom Holtzinger

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, Michael Potuck, and Lee Rohn are participating in this meeting by electronic communication pursuant to Governor Holcomb's Executive Orders 20-04, 20-09 and 21-05, as well as guidance from Indiana Public Access Counsellor Luke Britt.

Board member Aracelia Manriquez is physically present in City Council Chambers as we begin this meeting.

Per Mayor Jeremy Stutsman's Executive Order 2021-01, public attendance at City of Goshen meetings is currently yellow status allowed in person and virtual, following *City of Goshen Rules for Virtual Public Meetings - Updated February 8th, 2021*.

Public comments for the Board of Zoning Appeals will be limited to no more than three minutes per person, and members of the public exceeding the three-minute limit will be notified and/or muted.

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

III. Approval of Minutes from 2/23/21: A motion was made and seconded, Aguirre/Potuck, to approve the 2/23/21 minutes as presented with the following outcome: Potuck, yes; Rohn, yes; Aguirre, 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, Aguirre/Potuck, to file the Zoning/Subdivision Ordinances and Official Staff Reports into Record with the following outcome: Potuck, yes; Rohn, yes; Aguirre, yes; Manriquez, yes. The motion passed unanimously by a vote of 4-0.

V. Postponements/Withdrawals
None

VI. Developmental Variances – public hearing items

21-03DV – Jessica Olds requests a developmental variance to allow a 7' front (west) setback where 25' is required for the construction of a 10' x 15' (150 sf) front porch. The subject property is generally located at 1008 S 10th Street and is zoned Residential R-1 District.

Staff Report:

Mr. Deegan explained this request is for a 150 sf front porch on a 1,000 sf, one-story home, with an approximate 7' front setback where 25' is required. He referred to the aerial map included in packets and pointed out there are residential properties to the north and south with reduced front yard setbacks. He

also pointed out there are nearby industrial areas and for these reasons, Staff feels this proposal is reasonable as it's unlikely to affect the character of the neighborhood.

Staff recommends approval of this request, noting that condition #5 requires that any trees in the public right-of-way or front yard that are damaged or destroyed during construction, shall be repaired or replaced. He went on to say there is a recently planted oak tree in the front yard that will be fairly close to the proposed porch and this condition is in line with approvals granted in recent years and also supports the comprehensive plan of growing and maintaining the City's urban forest.

Mr. Deegan noted for the record there was one neighbor inquiry regarding this request. Once the proposal was explained, the neighbor had no concerns.

Petitioner Presentation:

Jessica Olds, 1008 S 10th Street, Goshen spoke on behalf of the petitioner. She stated she is familiar with the Staff Report and has nothing to add.

Mr. Aguirre asked Ms. Olds if she has any objection to condition #5.

Ms. Olds stated the tree was a gift from her parents and that she has spoken to the builder about preserving this tree.

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/Rohn, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-03DV with the 5 conditions listed in the Staff Report. A roll call vote was requested with the following outcome: Potuck, yes; Rohn, yes; Aguirre, yes; Manriquez, yes. The motion passed unanimously by a vote of 4-0.

21-04DV – The Falcon Corporation, Inc. and Nuway Construction request a developmental variance to allow building coverage of 51% where 50% is permitted for a 170' x 400' (68,000 sf) building addition. The subject property is generally located at 2434 Century Drive and is zoned Industrial M-1 District.

Staff Report:

Mr. Deegan explained this approximate 14 acre property contains an approximate 235,000 sf building, which he pointed out is in scale with other buildings along Century Drive. The proposed addition will add 68,000 sf to the north side of the building, bringing total building coverage to 51%. He pointed out that all other developmental standards will be met and Staff feels the building coverage of 1% over what is allowed is negligible. He pointed out surrounding properties are large industrial properties and the railroad separates the industrial properties and the agricultural uses to the east.

Staff finds the request reasonable and recommends approval. He noted that one inquiry was received from a representative of the property owner immediately south regarding this request. Once the request was explained, no opposition was voiced by the representative.

Petitioner Presentation:

Tim Wall, Nuway Construction, 2119 Carmen Court, spoke on behalf of the petitioner. He stated he's familiar with the Staff Report and has nothing to add. He's available to answer any questions.

Mr. Aguirre asked if this addition will cause any concerns regarding landscaping or drainage.

Mr. Wall stated that this project has gone through Technical Review and all of those issues are being addressed.

Mr. Deegan confirmed that this project has been through Technical Review and it's anticipated that all developmental requirements will be met.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Attorney Kolbus asked Mr. Rohn if he is voting on this item.

Mr. Rohn stated that he will recuse himself from this vote because he is an employee of Nuway Construction.

Action:

A motion was made and seconded, Aguirre/Potuck, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-04DV with the 5 conditions listed in the Staff Report. A roll call vote was requested with the following outcome: Potuck, yes; Aguirre, yes; Manriquez, yes. The motion passed unanimously by a vote of 3-0.

21-05DV – Ronald & Linda Altenhof request developmental variances to allow a 2' side (south) setback where 5' is required, a 4' rear (west) setback where 5' is required, and building coverage of 48% where a maximum of 35% is permitted, for the construction of a 22' x 20' (440 sf) detached garage. The subject property is generally located at 507 S 5th Street and is zoned Residential R-1 District.

Staff Report:

Mr. Deegan explained this single family home, located in the Historic Southside Neighborhood, is surrounded by single family uses and zoning. He pointed out that many homes in this neighborhood do not meet setback and building coverage requirements. The petitioner plans to remove a storage shed at the rear of the property and replace it with an approximate 440 sf two stall garage. This garage will increase the building coverage to 48% where the maximum allowed is 35%. Setbacks are proposed at 2' on the south where 5' is required and 4' at the rear where 5' is required. He pointed out that because of the small lot, 33' in width and approximately 4,500 sf in size, Staff finds the majority of today's request reasonable. He reminded Board members that in February, 2019, the BZA used this justification to allow lot coverage of 49% for a garage addition on a property in the same neighborhood. He cited narrowness of the lot as justification for the reduced side yard setback, but feels there is no justification for reducing the rear setback to 4' where 5' is required, pointing out the setback can be met. He advised that the petitioner is aware of Staff's recommendation, but the petitioner would like to keep yard space and feels the 4' setback is in line with adjacent structures.

Petitioner Presentation:

Ronald Altenhof, 507 S 5th Street, spoke on behalf of the petitioner. He stated he has modified his plans regarding overhangs in order to come closer to meeting City requirements.

Mr. Aguirre asked Mr. Altenhof to comment on Staff's recommendation that the rear setback should meet the 5' zoning requirement.

Mr. Altenhof responded that when he purchased the home there was a garage on the property which measured 4' from the edge of the concrete pad to the alley. The garage was eventually demolished and a shed was placed in that location. He pointed out a neighboring property owner has a garage 4' from the property line and his request for a 4' setback would match up with the neighbor's garage, allowing him to retain more yard area. He also stated he has revised his site plans to remove the overhangs on both the north and south sides of the proposed garage, but an overhang remains on the east and west sides. He asked for clarification on how the setback is measured.

Mr. Deegan explained the setback is measured from the overhang of the garage to the property line.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Aguirre asked Mr. Deegan to explain why Staff recommends meeting the 5' rear setback when the petitioner is only asking for a difference of one foot.

Mr. Deegan explained that anytime a property is in a position to meet a zoning requirement, Staff will make the recommendation that the requirement be met. He went on to say he didn't feel that one foot makes much of a difference, noting the petitioner laid out his case and if the Board wants to use that as their justification to grant this request they could. He did, however, point out that the spirit of the Zoning Ordinance was that non-conforming structures should be brought into conformity when possible and Staff feels this is appropriate.

Mr. Aguirre asked Attorney Kolbus if a previous decision regarding setbacks would have any impact on today's decision.

Attorney Kolbus stated that each property is viewed independently.

Action:

A motion was made and seconded, Aguirre/Potuck, to adopt the staff recommendations as the findings of the Board, but allowing a 4' rear setback as requested by the petitioner, and based on these findings, approve 21-05DV with the conditions listed in the Staff Report.

Mr. Deegan asked Mr. Aguirre to provide justification for his recommendation.

Mr. Aguirre stated that his recommendation is based on the fact that this garage is replacing a structure that had a 4' setback and the fact that the neighboring garage has the same setback.

A roll call vote was requested with the following outcome: Potuck, yes; Rohn, yes; Aguirre, yes; Manriquez, yes. The motion passed unanimously by a vote of 4-0.

21-06DV - Dennis & Deborah McCarthy and Gleason Industrial Products request a developmental variance to allow the reface of an abandoned freestanding sign where any sign located on a property which becomes vacant for greater than 60 days shall be removed or have the face replaced with a weatherproof, blank face. The subject property is generally located at 827 Lincolnway East and is zoned Commercial B-3 District.

Staff Report:

Mr. Deegan explained this property is the vacant building at the corner of Plymouth Avenue and Lincolnway East and the former location of Double D's restaurant which closed in December, 2018. This property is surrounded by commercial properties along Lincolnway East and residential properties to the west. Today's request is to reface a freestanding sign on the Lincolnway East side of the property. He noted the sign is approximately 88 sf in area with an overall height of 19'. The sign is considered abandoned because the property is vacant and the zoning ordinance requires that abandoned signs be removed or covered with a blank face.

Today's request stems from a compliance matter regarding the installation of mobile signs on the property by a nearby industrial company, without Planning approval. In lieu of the mobile signs, the petitioner would like to use the freestanding sign for his message. Staff finds this request reasonable, noting there are multiple commercial signs adjacent to the property and the reface will not change the size of the sign. He pointed out the goal of the zoning ordinance is to keep abandoned signs from falling into disrepair and the reface of this sign will accomplish this. He pointed out to Board members that the recommended conditions of approval include that all other signs, and vehicles and trailers in excess of one-ton capacity, shall be removed from the property within 7 days of the BZA's approval.

Petitioner Presentation:

William Malone, 202 Yorktown Drive, spoke on behalf of the petitioner. He stated this request is based on Gleason Industrial Products need for employees. He stated that Lincolnway East is a busy road and this helps reach potential employees. He also pointed out the reface will improve the look of the sign and brings additional attention to an available building.

Mr. Aguirre asked if there would be any additional signage on the building.

Mr. Malone stated the freestanding sign would be the only signage.

Mr. Aguirre asked if this signage has helped him find employees.

Mr. Malone stated that the sign has definitely helped reach potential employees.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Aguirre asked if any similar requests have been considered by the BZA.

Mr. Deegan stated that this is an unusual request and pointed out that signs cannot be reviewed on content. He reiterated that Staff feels the reface will make it less likely that the sign will fall into disrepair.

Action:

A motion was made and seconded, Aguirre/Potuck, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-06DV with the 6 conditions listed in the Staff Report. A roll call vote was requested with the following outcome: Potuck, yes; Rohn, yes; Aguirre, yes; Manriquez, yes. The motion passed unanimously by a vote of 4-0.

21-07DV – Dorothy Smucker and Freedom Builders request developmental variances to allow 35.6% building coverage where a maximum of 35% is permitted for two proposed homes (Lots 27A & B). The subject property is generally located at 1634 & 1636 Clover Creek Lane and is zoned Residential R-3 District.

Staff Report:

Mr. Deegan explained these properties are two lots in Maplewood Estates, noting these small lots were created in 2008 by a replat of a larger lot. The replat was to allow the construction of small, single family, attached homes. The petitioner proposes a single family attached home on these lots which will be the same size and design. He stated that the homes will meet all developmental requirements with the exception of 36% lot coverage where 35% maximum is permitted. In April, 2018 and August, 2019, the BZA approved similar requests for neighboring properties. 35.8% was granted for 4 lots in 2018 and 36.6% was granted for 2 lots in 2019. Because all other developmental requirements will be met and because the homes match the character of surrounding properties, Staff recommends approval of the request. He advised that the Planning Office was not contacted by any surrounding property owners regarding this request.

Petitioner Presentation:

Paul Hostetler, Freedom Builders, 54824 County Road 33, Middlebury, spoke on behalf of the petitioner. He stated that after this request was made, the petitioner asked about making the garage one foot wider, which would make this lot coverage 36%. He stated the plan that was submitted was at 35.6% and asked if this could be changed.

Mr. Deegan commented that the calculation he made on the most recent set of plans was exactly 36% which was up from a prior set of plans. He corrected his earlier statement explaining that this request was advertised at 35.6% lot coverage and if the BZA approves the request today, it cannot exceed 35.6% coverage.

Attorney Kolbus clarified that the Board cannot exceed what was advertised. He explained if this petition was advertised at 35.6% and if the petitioner wanted to increase the coverage, the petitioner would have to refile to amend the request.

Mr. Hostetler stated that answers his question and that they'll stay with the 35.6% coverage.

Mr. Aguirre asked if there are additional lots here that they would like to develop.

Mr. Hostetler stated there are a few lots on the opposite side of the road, but they're limited by an easement along the rear and this won't be an option for those lots.

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/Potuck, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-07DV with the 4 conditions listed in the Staff Report. A roll call vote was requested with the following outcome: Potuck, yes; Rohn, yes; Aguirre, yes; Manriquez, yes. The motion passed unanimously by a vote of 4-0.

VII. Audience Items

None

VIII. Staff Board Items:

- Discussion: Expanding open parking in the front yard setback for families with multiple drivers

Mr. Deegan stated that a letter addressing open parking in the front yard setbacks is included in the packets. He noted this topic came up last year when a petitioner with a large family and multiple drivers petitioned to install parking in his front yard and this request prompted a discussion about making changes to the Zoning Ordinance to accommodate these requests. The letter in today's packet explains that any change to the ordinance is undertaken by the Plan Commission and City Council. The BZA is not involved in this process.

He explained that Staff reviewed 5 years of BZA cases and found 14 requests for open parking in the front yard of residential properties. Of those 14 requests, it was only clear that 2 were related to family size. It was also pointed out in last year's discussion that this type of request might trend upward due to today's housing market and economic uncertainties.

While these trends might continue, Staff feels the volume of requests don't warrant a change to the Zoning Ordinance at this time. Staff's conclusion is that at this time it's more appropriate for the BZA to review parking options for specific properties than it is to form new regulations for parking in the front yard setback. He noted that the Planning Office often gets compliance cases from Code Enforcement or neighbors, complaining that front yard parking is unsightly. He pointed out the variance process is in place to determine where it is appropriate. He noted that there will likely be a request next month for front yard parking which is because of family size, but it's worth pointing out that the volume is not excessive at this time.

Mr. Aguirre thanked Mr. Deegan for his research and agreed that this is not happening enough to necessitate a change to the ordinance.

IX. Adjournment: 4:57 pm Aguirre/Rohn

Respectfully Submitted:

/s/ Lori Lipscomb
Lori Lipscomb, Recording Secretary

Approved By:

/s/ Aracelia Manriquez
Aracelia Manriquez, Chair

/s/ Richard Aguirre
Richard Aguirre, Secretary