

Minutes - Goshen Board of Zoning Appeals  
Tuesday, April 27, 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 Tom Holtzinger was physically present, along with Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus. Absent: Aracelia Manriquez

**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 21-08, 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.

Per Mayor Jeremy Stutsman's Executive Order 2021-02, 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 3/23/21: A motion was made and seconded, Aguirre/Holtzinger, to approve the 3/23/21 minutes as presented with the following outcome: Holtzinger, yes; Potuck, yes; Rohn, yes; Aguirre, 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/Rohn, to file the Zoning/Subdivision Ordinances and Official Staff Reports into Record with the following outcome: Holtzinger, yes; Potuck, yes; Rohn, yes; Aguirre, yes. The motion passed unanimously by a vote of 4-0.

**V.** Postponements/Withdrawals  
None

**VI.** **Developmental Variances** – public hearing items

**21-08DV** – Dale E. Klassen & Beverly K. Lapp request a developmental variance to allow a 5' front (west) building setback along 15<sup>th</sup> Street where 25' is required for a 24' x 24' (576 sf) detached garage. The subject property is generally located at 1201 E Plymouth Avenue and is zoned Residential R-1 District.

*Staff Report:*

Mr. Deegan explained this property contains a small one-story home with a one-stall detached garage which is located within the front yard setback and which also appears to be partially located in the public right-of-way. The property also has a circle drive. The petitioner proposes removing the existing garage and circle drive and replacing it with a two-stall garage with a concrete driveway. A developmental

variance is necessary because the garage will have a 5' front setback along 15<sup>th</sup> Street where 25' is required. He noted this property is located on a corner which means it must meet two front-yard setbacks, making it difficult to place a structure without encroaching into setbacks. He explained that Staff supports this request, noting this will improve the appearance of the property by removing the garage located partially in the City right-of-way and by removing the gravel circle drive.

Mr. Deegan discussed recommended conditions of approval, pointing out that the 5' west setback mentioned in condition #4 should be measured from the overhang of the garage to the property line. He also noted that separate approvals are required for a patio at the rear of the house and for a fence installed on the southwest corner of the property without approval.

*Petitioner Presentation:*

Dale Klassen, 619 S 7<sup>th</sup> Street spoke on behalf of the petitioner. He stated he's familiar with the Staff Report and has nothing to add.

Mr. Aguirre asked if the staff conditions, including the 5' overhang and removal of the fence, are acceptable to him.

Mr. Klassen stated he's aware that setbacks are generally measured from the furthest projection of the building. Regarding the fence, he stated that it's more of a privacy screen. He stated it was installed last fall to hide trash cans and to provide a small amount of privacy to the property. He stated he will likely remove the fence and plant shrubbery which will provide some sort of privacy.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre asked Mr. Deegan if removing the fence has to be enforced.

Mr. Deegan stated that if the fence is lowered to 4' in height and completely on private property, it can remain. If the fence is over 4' in height, it will require a developmental variance and because it was not advertised as part of this request, it would need to come back before the BZA.

Mr. Aguirre requested that the hearing be reopened to ask the petitioner about lowering the height of the fence.

*Reopen public hearing*

Mr. Aguirre asked Mr. Klassen about lowering the height of the fence to meet the zoning requirements.

Mr. Klassen stated he can lower the fence and that by his measurements it does encroach into the right-of-way by approximately one foot. He pointed out if he lowers the height of the fence and moves it entirely on his property, he loses what he was trying to do. He stated he doesn't want to go through the BZA process for the fence and understands he has the option of cutting it down to 4' and moving it out of the right-of-way, or removing the fence altogether. He stated he will do one or the other.

Mr. Deegan clarified that it has to be out of the right-of-way and if Planning is going to approve it without BZA approval, it cannot be taller than 4'.

Mr. Klassen stated he understands and if he's allowed to make that choice or remove it completely, that will be fine.

*Reclose public hearing*

*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 21-08DV with the 6 conditions listed in the Staff Report. A roll call vote was requested with the following outcome: Holtzinger, yes; Potuck, yes; Rohn, yes; Aguirre, yes. The motion passed unanimously by a vote of 4-0.

**21-10DV** - Wal-Mart Stores and TNT Fireworks request a developmental variance to permit outside sales and display of merchandise (fireworks) from June 16, 2021 to July 5, 2021 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 for fireworks sales at the Walmart on Lincolnway East is similar to the annual requests we've received since 2014. He explained the property is zoned Commercial B-4, which is the zoning for planned shopping centers. The request is to allow outside sales and display of fireworks and although the B-4 permits outside displays and sales of merchandise, it must be approved by the BZA. He reminded BZA members that this request was approved for 10 years at the 2014 BZA meeting, but because Walmart would not approve a multi-year agreement, the petitioners must return each year for approval. The BZA has granted a similar approval each year since the original approval. This year's request is similar to previous years, with outside sales from June 16<sup>th</sup> to July 5<sup>th</sup>, with tent sales taking place from 10:00 am to 10:00 pm daily. Approximately 12 parking spaces will be displaced by this 30' x 40' tent, but he pointed out that aerial views of the property over the years shows this area is seldom used for parking. Planning has no record of any complaints regarding this activity and recommends approval.

*Petitioner Presentation:*

Rachel Roos, 4003 Helton Drive, Florence, AL spoke on behalf of the petitioner. She stated a local church uses this as their annual fundraiser and had nothing further to add.

*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/Holtzinger, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-10DV with the 5 conditions listed in the Staff Report. A roll call vote was requested with the following outcome: Holtzinger, yes; Potuck, yes; Rohn, yes; Aguirre, yes. The motion passed unanimously by a vote of 4-0.

**21-11DV** – The City of Goshen Department of Redevelopment and Roland Weaver request developmental variances to allow a residential building lot of 3,485 SF where 8,000 SF is required, a front (west) building setback of 4' where 25' is required, a rear (east) setback of 21' where 25' is required, a front (north) driving aisle setback of 2' where 25' is required, and 300 SF of occupied space on the ground floor where 650 SF is required for the construction of a new two-story single family home. The subject property is generally located at 208 W Monroe Street and is zoned Residential R-1 District.

*Staff Report:*

Mr. Deegan explained this property is a vacant lot on the southeast corner of River Race Drive and Monroe Street. He provided background information on this lot, explaining that the Goshen Department of Redevelopment acquired the property in 2007. In 2014 an existing home on the property was demolished and a portion of the northwest corner of the property was dedicated as public right-of-way. Another 15' wide section was dedicated in 2017 which reduced the lot to approximately 3,485 sf in area.

Today's request is for multiple developmental variances to allow a new single family home to be constructed on the parcel and includes the following:

- To allow a residential building lot of 3,485sf where 8,000 sf is required
- A front (west) building setback of 4' where 25' is required
- A rear (east) setback of 21' where 25' is required,
- A front (north) driving aisle setback of 2' where 25' is required
- 300 sf of occupied space on the ground floor where 650 sf is required

He explained that the Comprehensive Plan encourages infill development when possible, pointing out that the BZA approved three infill houses last year, one of which was also on River Race Drive and required numerous developmental variances. Staff supports this variance request, noting the proposed home matches the characteristic of other homes on River Race Drive. He discussed the recommended conditions for approval and noted that no calls were received concerning this request.

*Petitioner Presentation:*

Mark Brinson, Community Development Director for the City of Goshen, spoke on behalf of the petitioner. He stated the Redevelopment Commission has made a number of improvements along this corridor and when improvements were made to the road the decision was made to demolish the house due to its poor condition. The hope was that one day they would be able to rebuild a home on the lot that would fit the neighborhood and take advantage of the existing infrastructure. He noted there's a lot of interest from people wanting to live in this neighborhood and that they have a purchase agreement with Roland Weaver.

Roland Weaver, 61873 County Road 7, Elkhart spoke on behalf of the petitioner. He stated his proposal is for a two-story house with a garage, utility room and closet on the main floor and living space on the second floor.

Mr. Brinson stated he feels one of the advantages of this home is that the two-story design minimizes the footprint of the home and keeps as much lot area as possible.

Mr. Aguirre asked if street parking is available in this area.

Mr. Brinson stated street parking is available on Monroe Street, but not on River Race Drive. He pointed out that additional parking is also available on S Second Street and S Third Street.

Mr. Aguirre asked if Mr. Weaver felt parking would be adequate.

Mr. Weaver stated that the home will have a two-car garage and a space on the driveway, so he feels parking will be adequate.

*Audience Comments:*

Dale Klassen, 619 S 7<sup>th</sup> Street spoke in support of the petition. He stated he likes this project and is glad to see it's being proposed.

*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 21-11DV with the 9 conditions listed in the Staff Report. A roll call vote was requested with the following outcome: Holtzinger, yes; Potuck, yes; Rohn, yes; Aguirre, yes. The motion passed unanimously by a vote of 4-0.

**21-03UV** – JRT Realty, LLC and Kil Architecture/Planning request a use variance to allow the expansion of a non-conforming use for an approximately 250 SF building addition where funeral homes are a permitted use in the Commercial B-2 and B-3 Districts. The subject property is generally located at 1911 S Main Street and is zoned Residential R-1 District.

*Staff Report:*

Mr. Deegan explained this request is for Yoder-Culp Funeral Home which has been in existence since at least 1970 when it was annexed into the City of Goshen. Today's request is to allow an approximate 250 sf office addition on the front of the building. Funeral homes are permitted uses in the Commercial B-2 and B-3 District, which means this Residential R-1 property requires a use variance. Staff recommends approval of this relatively small building addition, pointing out that the existing brickwork suites the character of the neighborhood and noting that this addition will match the existing brickwork. He also noted that the addition will be behind the existing front walls along S Main Street and River Vista. Additionally, all other developmental requirements will be met.

*Petitioner Presentation:*

Tim Yoder, 1911 S Main Street spoke on behalf of the petitioner. He stated he's familiar with the Staff Report and has nothing to add.

Gregory Kil, 1126 Lincolnway East, South Bend, also spoke on behalf of the petitioner. He stated this is a fairly modest addition, explaining this faces Main Street, but will be set back as stated above.

*Audience Comments:*

There was no one to speak to the petition.

*The public hearing was closed.*

*Staff Discussion:*

Mr. Aguirre asked for confirmation that when looking at the building, this addition would be to the left Mr. Kil replied that is correct.

*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 21-03UV with the 5 conditions listed in the Staff Report. A roll call vote was requested with the following outcome: Holtzinger, yes; Potuck, yes; Rohn, yes; Aguirre, yes. The motion passed unanimously by a vote of 4-0.

**VII.** Audience Items  
None

**VIII.** Staff Board Items:

- 6-month extension for 1021 E Kercher (20-12UV & 20-23DV) Schrock Commercial Strip Mall, from May 24, 2021 to November 24, 2021

Mr. Deegan stated that developmental variances were approved in November, 2020 for commercial uses in this M-1 zoning district and the property is still being reviewed in Technical Review. It's unclear if it will be finalized prior to the May 24<sup>th</sup> expiration date, so a 6-month extension is being requested today.

*Action:*

A motion was made and seconded, Holtzinger/Aguirre, to grant a six month extension from May 24, 2021 to November 24, 2021 for 20-12UV & 20-23DV (1021 E Kercher Road). A roll call vote was requested with the following outcome: Holtzinger, yes; Potuck, yes; Rohn, yes; Aguirre, yes. The motion passed unanimously by a vote of 4-0.

**IX.** Adjournment: 4:35 pm Holtzinger/Aguirre

Respectfully Submitted:

/s/ Lori Lipscomb  
Lori Lipscomb, Recording Secretary

Approved By:

/s/ Aracelia Manriquez  
Aracelia Manriquez, Chair

/s/ Richard Aguirre  
Richard Aguirre, Secretary