

Minutes - Goshen Board of Zoning Appeals
Tuesday, July 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: Tom Holtzinger, Aracelia Manriquez, Michael Potuck, Lee Rohn, and Bethany Campbell. Also present were City Planner Rhonda Yoder and Assistant City Attorney James Kolbus.

II. Board of Zoning Appeals Appointment

- Bethany Campbell – Appointed by the Mayor to replace Richard Aguirre 1/1/20 – 12/31/23

Ms. Yoder introduced and welcomed Bethany Campbell who has been appointed by Mayor Stutsman to replace Richard Aguirre, the City's new Clerk Treasurer.

III. Election of Secretary to replace Richard Aguirre

A motion was made and seconded, Holtzinger/Potuck, to appoint Lee Rohn as secretary, replacing Richard Aguirre. The motion passed unanimously by a vote of 5-0.

IV. Approval of Minutes from 6/22/21: Holtzinger/Rohn 4-0 (Ms. Campbell was not a member of BZA in June and did not vote.)

V. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Holtzinger/Rohn 5-0

VI. Postponements/Withdrawals
None

VII. Use & Developmental Variances – public hearing items

21-04UV & 21-19DV – Grey Dog Properties, LLC and Matthew J Heffernan request a use variance to permit a second dwelling unit in an existing building where two-family dwelling units are permitted in the Residential R-2, R-3, and PUD Districts and conditional uses in the R-1S and B-2 Districts, and a developmental variance to allow zero onsite parking spaces where 4 spaces are required. The subject property is generally located at 307 E Purl Street and is zoned Residential R-1 District.

Ms. Yoder noted for the record that she is filling in for Rossa Deegan who is on vacation. Rossa prepared all staff reports and she is presenting on his behalf.

Staff Report:

Ms. Yoder explained this Residential R-1 property contains a two story building which has historic commercial uses and an upstairs apartment that was added by variance in 1997. Today's request is to convert the first floor into a second apartment and to allow no onsite parking.

Ms. Yoder pointed out that converting the first floor into living space will likely generate less traffic than a commercial use and parking for the residential use will likely involve fewer vehicles than a commercial use in the building. She stated the petitioners have requested that all previous variances be removed with this approval.

Staff recommends approval of the request.

Petitioner Presentation:

Matthew J Heffernan, 16165 Easton Court, Goshen spoke on behalf of the petitioner. He stated he's familiar with the Staff Analysis and has nothing to add.

Audience Comments:

There was no one to speak to the petition.

The public hearing was closed.

Staff Discussion:

Mr. Rohn asked if the upstairs apartment is currently rented and if so, where do they park.

Mr. Heffernan stated the apartment is rented and the tenants park on the street.

Action:

A motion was made and seconded, Holtzinger/Potuck, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-04UV & 21-19DV with the 6 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

21-05UV & 21-20DV – Len & Marcia Morris and Bud Walterhouse request a use variance to permit a 1,580 sf greenhouse where private greenhouses are a conditional use permitting a maximum of 200 sf of occupied space or floor area, and a developmental variance to allow approximately 6,334 sf of detached accessory buildings where the total building footprint area of all detached accessory buildings shall not exceed the building footprint area of the primary residential dwelling of approximately 3,405 sf. The subject property is generally located at 2614 S Main Street and is zoned Residential R-1 District.

Staff Report:

Ms. Yoder explained this request is for a 1,580 sf greenhouse on a 5.5 acre property and gave background information on the property and zoning. She explained the petitioners have planned several improvements to the property which includes a large private garden, serving the single family home. In addition to the proposed greenhouse, she noted there is a garden cottage on the property, along with a detached garage, pool house, shed, and barn.

A variance was granted by the BZA in December, 2020 for an 831 sf greenhouse and an increase to detached accessory area. The petitioner's plans have now changed and they have submitted a new design for the 1,580 sf greenhouse. An addition is also planned for the detached garage and the house. She explained the use variance is for the greenhouse and the developmental variance is for total detached accessory use that's greater than the footprint of the home.

Staff recommends approval of the variance and detailed reasons for the recommendation. She noted that prior variances will be voided if today's request is granted.

She noted for the record that the Planning Office received an email yesterday from Tina and Kevin Mellot voicing concerns about the request and she distributed copies to Board members.

Petitioner Presentation:

Bud Walterhouse, 55615 Riviera Drive, Elkhart, spoke on behalf of the petitioner. He addressed concerns from the Mellot's letter explaining that there is an easement on the property for the driveway. He also noted that it's been blocked with logs and rocks so they haven't been using it.

Mr. Holtzinger asked what led to the request for a larger greenhouse.

Mr. Walterhouse stated that while on a trip, the owners saw one they liked better and decided to make the change. They feel the new greenhouse design will be a nice addition to the property.

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, Holtzinger/Rohn, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-05UV & 21-20DV with the 5 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

21-06UV & 21-22DV – Alan L Gonzalez Rodriguez and Juana A Rodriguez Robles request a use variance to allow a 512 sf swimming pool where private swimming pools are a conditional use in the Agricultural A-1 District, the R-1, R-1S, R-2, R-3, and R-4 Residential Districts, and the PUD District, and a developmental variance to allow a side (north) setback of 11’ and a side (south) setback of 5’ where side yards abutting any residential zoning district are a minimum of 20’ for a concrete deck surrounding a pool. The subject property is generally located at 913 N Main Street and is zoned Commercial B-1 District.

Staff Report:

Ms. Yoder explained this single family home is zoned Commercial B-1 and gave background on the area zoning. She explained the zoning is the reason for the variance noting that if the property was zoned residential, no variance would be required. She went on to say the setback requires a variance because setbacks in the B-1 District are greater than what would be required for residential zoning.

Staff recommends approval of the variance as all findings of fact are confirmed.

Petitioner Presentation:

Alan Gonzalez Rodriguez, 913 N Main Street, spoke on behalf of the petitioner. He stated he would like to install a 16’ x 32’ in ground pool in his backyard and has spoken to his neighbors at 101 W Wilden who have concerns about the placement of the pool. He stated he has no problem making changes to the pool placement, stating he was open to having an 11’ setback along the south property line, and moving the 5’ setback to the north side of the property. He noted his neighbor to the south has concerns about their wooden basement and the possibility of water damage.

Ms. Yoder explained that this request was advertised with an 11’ setback along the north property line so while the 11’ can be approved for the south side of the property, the 11’ setback along the north cannot be changed to allow less than what was advertised. She asked the petitioner if he had room to move the pool farther north and maintain the 11’ setback.

Mr. Rodriguez stated he feels there is room to do this.

Audience Comments:

Nancy Josselyn, 101 W Wilden Avenue, and Jeff Josselyn, 24391 County Road 26, also spoke to the petition. Mr. Josselyn gave background information on the basement in the house owned by his mother and the high water table in the area. He commented that they have concerns about rainwater coming off of the patio and the concrete surrounding the pool towards his mother’s property.

The public hearing was closed.

Staff Discussion:

Attorney Kolbus reminded Board members that they can approve a setback of 11’ on the south, but cannot reduce the 11’ setback that was advertised for the north side of the property.

Mr. Rohn asked Mr. Rodriguez if he understood what the Board was discussing. The 11' north setback would have to be met and the south setback is being discussed at 11' also. He explained the Board can approve that, but if that's not possible, he will need to reapply with new measurements.

Attorney Kolbus clarified that if the petitioner wants to have a 5' setback along the north property line, he'll need to reapply. He went on to say if the petitioner feels he can meet the 11' setback along the north side of the property, that can be approved here today.

Mr. Rodriguez asked if he would be required to have an 11' setback on both the north and south sides.

Ms. Yoder replied that the north must be a minimum of 11' because that's what was advertised. The south was advertised at 5' so that's the minimum required for the south side.

Mr. Rodriguez stated he feels he can meet the 11' setback for both the north and south sides.

Dioni Sigala, wife of Mr. Rodriguez, also spoke to this petition. She stated she feels they can meet the 11' setback for both sides if they are allowed to move the fence.

Mr. Yoder responded that the fence can be adjacent to the property line, so they can move the fence if necessary.

Action:

A motion was made and seconded, Rohn/Holtzinger, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-06UV & 21-22DV with the following conditions:

1. The variance shall become null and void unless a zoning clearance has been issued and substantial progress has been made within six (6) months of the date of the BZA approval.
2. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.
3. An approved zoning clearance form is required.
4. Approval by the Building, Engineering and Fire Departments is required.
5. The minimum side (south) setback shall be 11 feet.

The motion passed unanimously by a vote of 5-0.

21-23DV – Debra K Snyder & Pamela J Garber and Reliance Construction, Inc. request a developmental variance to allow a rear (west) setback of 9' where 25' is required for the addition of a 780 sf attached garage. The subject property is generally located at 407 Colorado Drive and is zoned Residential R-1 District.

Staff Report:

Ms. Yoder explained multiple improvements are proposed for this home, located on the corner of Nebraska Drive and Colorado Drive. Among the improvements will be the conversion of an existing 2-car garage into a multi-purpose room, the construction of a new attached 2-car garage to the rear of the house, and the expansion of the existing driveway. All improvements can be approved administratively with the exception of the new 2-car garage which will have a 9' rear setback where 25' is required.

Ms. Yoder explained that the request is reasonable, pointing out the 9' rear yard setback will function similarly to a side yard adjacent to the property to the west and the proposed setback will provide adequate buffer between the homes. Staff recommends approval of the request.

Petitioner Presentation:

Sam Beachy, 201 S Main Street, Nappanee, spoke on behalf of the petitioner. He stated this corner lot limits where the garage can be placed and they felt this was the best option. He asked that the variance be granted.

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, Holtzinger/Potuck, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-23DV with the 3 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

21-24DV – Bradd A & Kelsey M Weddell request developmental variances to allow a side (east) setback of 5’ for the addition of a 480 sf attached garage where 8’ is required and a side (east) setback of 1’ for a driveway expansion where 5’ is required. The subject property is generally located at 1405 Elmherst Court and is zoned Residential R-1 PUD District.

Staff Report:

Ms. Yoder explained this request is for an attached garage addition with a side setback of 5’ where 8’ is required and an expanded driveway with a 1’ setback where 5’ is required. She went on to explain the garage will have the same setback as the requirements for a detached garage and the setback for the driveway will match the existing driveway. She also noted the configuration of the existing home makes it difficult to locate the proposed driveway and garage expansion elsewhere. Staff recommends approval of the request.

Petitioner Presentation:

Bradd Weddell, 1405 Elmherst Court, spoke on behalf of the petitioner. He stated he’s familiar with the staff report and has nothing 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, Holtzinger/Rohn, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-24DV with the 3 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

21-07UV & 21-25DV – Big Rod Winches, LLC and Abonmarche Consultants request a use variance to allow a 6,630 sf expansion of a non-conforming use (automobile dismantling & impoundment yard) where the use is conditional in the Industrial M-2 District, and developmental variances to allow a front (south) yard setback of 1’ and front (west) setback of 5’ for an impound yard where 25’ is required and to allow 9 large street trees where 11 are required. The subject property is generally located at 1407 Chicago Avenue, 1408 Bashor Road, and 1409 Virginia Street and is zoned Commercial B-3 District.

Staff Report:

Ms. Yoder explained this request is for an impound yard with frontage on Bashor Road, Chicago Avenue, and Virginia Street, and this will be an expansion into the southwest part of the property. She noted this impound

yard has been in operation since at least 1975 and is used to store impounded and wrecked vehicles, with no vehicle dismantling onsite. She noted past expansions and improvements have required BZA approval and those are listed in the staff report.

Proposed changes to this property include the demolition of a vacant building in the southwest corner of the property and a use variance is required to expand the impound yard into that area, which will also be fenced in. A developmental variance is required for setbacks and to allow 9 large street trees where 11 trees are required.

Ms. Yoder outlined the reasons Staff recommends approval of the request and discussed the required conditions and commitments of approval. She noted that commitment #4 should also be amended to allow continued customer parking outside the fence along Virginia Street.

Petitioner Presentation:

Crystal Welsh, 1009 S 9th Street, spoke on behalf of the petitioner. She stated the owners have kept this property clean, the fence is well maintained, and the parking area outside the fence is necessary for customers. She noted that because of the unusual property with frontage on 4 streets, it would be difficult to place the required number of street trees.

Jim Steele, 514 N Greene Road, also spoke on behalf of the petitioner. He stated business has increased significantly and additional space is definitely needed. He stated vehicles that are not claimed take up a large amount of his storage space and it can take several months to get authorization to sell or junk these vehicles.

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, Holtzinger/Campbell, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-07UV & 21-25DV with the 5 conditions and 6 commitments listed in the Staff Report, amending commitment 4 to read the following:

“Tow vehicles shall be parked inside the fence on the property at all times. The portion of Commitment 3 of 14-12UV related to tow vehicles shall no longer be valid. Customer parking will continue to be permitted outside the fence along Virginia Street.”

The motion passed unanimously by a vote of 5-0.

21-08UV – Elliott Anne, LLC and Abonmarche Consultants request a use variance to allow an office (human resources and personnel training) where business offices are a conditional use in the Commercial B-1 and PUD Districts and a permitted use in the Commercial B-2, B-3, and B-4 Districts. The subject property is generally located at 1753 Eisenhower Drive N and is zoned Industrial M-1 District.

Staff Report:

Ms. Yoder explained this is an existing building in the Goshen Industrial Park and once served as the headquarters for Goshen Plumbing and Heating. The petitioners wish to use the building for a human resources office and personnel training facility, with no industrial use in the building. If there was an industrial use in the building, a related office use would also be permitted, but because there is no industrial use in the building, a use variance is required. She pointed out the office use will be less intense than a production facility, there is ample parking, and it will be similar to other properties that have large offices in addition to their industrial uses.

Petitioner Presentation:

Crystal Welsh, 1009 S 9th Street, spoke on behalf of the petitioner. She stated that this company has manufacturing facilities in the area, but this is a standalone building that has previously been used for an office which makes it ideal for this intended use. She asked that the Board approve this request.

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, Holtzinger/Potuck, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-08UV with the 5 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

21-26DV – Habitat for Humanity of Elkhart County requests a developmental variance to allow the construction of a new home on a residential building lot of 5,428 sf where 8,000 sf is required. The subject property is generally located at 123 N 6th Street and is zoned Residential R-1 District.

Staff Report:

Ms. Yoder explained this property is located on the southwest corner of Clinton and 6th Streets and gave background information on the parcels, noting that until recently it was two separate tax parcels and two separate properties, each with a two-story home. The parcels have now been combined and Habitat proposes to construct one single family home. Because the lot is less than 8,000 sf in area, a developmental variance is required. All other developmental requirements will be met and Staff recommends approval of the request.

Petitioner Presentation:

Greg Conrad and Ryan McDowell, Habitat for Humanity, 2910 Elkhart Road, spoke on behalf of the petitioner. Mr. Conrad stated they purchased this property from LaCasa with the intention of building a single family home. Plans are to begin construction as soon as they have approval from the Planning Office.

Mr. Rohn asked about sidewalks.

Mr. McDowell stated that if any sidewalks are damaged during construction they will be repaired or replaced.

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, Rohn/Potuck, to adopt the staff recommendations as the findings of the Board, and based on these findings, approve 21-26DV with the 6 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

21-27DV – 7-Eleven, Inc. and Paragon Installations, Inc. request a developmental variance to replace a portion of a non-conforming freestanding sign with a 22” x 24” electronic message center sign where electronic message centers are not permitted to be added to any non-conforming signs. The subject property is generally located at 1000 S Main Street and is zoned Residential R-1 District.

Staff Report:

Ms. Yoder explained this is a gas station/convenience store, located on the corner of S Main Street and Jackson Street and located in a Residential R-1 zoning district. Because gas stations are not permitted in the R-1, numerous BZA variances have been required over the years for development of this property. Today’s request is because of changes to the branding and the request is to update the changeable copy portion of the freestanding sign with an electronic message center (EMC) showing fuel prices, noting the EMC would be limited to fuel prices only. She went on to explain that the Zoning Ordinance prohibits EMC’s from being placed in non-conforming signs, thereby requiring a variance. Staff recommends approval, noting the freestanding sign is illuminated and has been on the property for several years without incident, and the upgrade from changeable copy to EMC for fuel prices only is negligible and unlikely to cause harm. The proposed changes do not represent a significant visual change and Staff recommends approval with conditions.

Petitioner Presentation:

No one was present to speak on behalf of the petitioner.

Audience Comments:

Mike Sommer, 1011 S 7th Street, spoke in opposition to the petition. He asked that conditions be attached to any approval requiring 7-Eleven to be a better neighbor. He listed the following concerns:

- Site is not kept clean. Trash blows throughout the area.
- Lights shine onto neighboring properties
- Noisy conditions
- Understaffed
- Lack of supervision

Mr. Holtzinger asked if Mr. Sommer has spoken with anyone from 7-Eleven.

Mr. Sommer stated he has spoken with employees who say they’ll pass the message to the manager. He stated this may or may not happen. He stated a lot of the trash is from walk in customers and that noise is a big issue day and night.

Mr. Holtzinger asked if Mr. Sommer has complained to the City of Goshen.

Mr. Sommer stated he’s complained about the noise and it was suggested to him that he post a complaint on the City’s Facebook page.

Mr. Holtzinger asked if Mr. Sommer has spoken with the owner.

Mr. Sommer stated he has not spoken with the owner and doesn’t know if he’s ever present at the station.

Jeff Alheim, 1015 S 7th Street, also spoke in opposition to the petition. He stated the fence is in disrepair and the property needs to be cleaned up.

Doug Schirch, 1019 S 7th Street, also spoke in opposition to the petition. He stated he agrees with previous comments regarding the amount of trash coming from the property, the amount of noise, and that the site is understaffed and employees appear to have very little training.

Mike Sommer, 1011 S 7th Street, stated they’re here today because they anticipated having the opportunity to speak directly to representatives of 7-Eleven.

Jeff Alheim, 1015 S 7th Street, asked if there is any limitation on hours of operation.

Ms. Yoder replied the hours of operation are at the company’s discretion. For the City to limit the hours, it would have to be attached to a use variance related to the use of the property.

The public hearing was closed.

Staff Discussion:

Mr. Yoder reminded Board members that the conditions attached to the variance must be reasonably related to the request. While the use may be an issue, there are other avenues to address those concerns. She clarified that conditions cannot be attached that are not related to the sign itself.

She also noted the fence that’s been reported in disrepair can be addressed by the Planning Office and she will see that it’s looked into. She will also send a message to code enforcement regarding the trash. She noted the owner would need to address the lighting, noise issues, and understaffing. She also noted that we can make the petitioner aware of these concerns and get contact information for the owner so comments can be forwarded.

Ms. Yoder advised Board members on their options for moving forward with this petition, noting they can make a decision today or table the request.

Mr. Holtzinger responded that he feels the petition should be tabled to the August meeting, especially since so many people have been here today to voice concerns.

Attorney Kolbus stated if this petition is tabled, the post meeting notice should explain that if the petitioner fails to be present at the next meeting, a decision will be made in their absence.

Action:

A motion was made and seconded, Holtzinger/Rohn, to table 21-27DV to the August 24, 2021, Board of Zoning Appeals meeting and if the petitioner is not present at the meeting the Board will make a decision in their absence. The motion passed unanimously by a vote of 5-0.

VIII. Audience Items

None

IX. Staff Board Items

Ms. Yoder noted for the record that a residency form was received from Ms. Campbell and welcomed her to the Board.

X. Adjournment: 5:20 pm Manriquez/Rohn

Respectfully Submitted:

/s/ Lori Lipscomb

Lori Lipscomb, Recording Secretary

Approved By:

/s/ Aracelia Manriquez

Aracelia Manriquez, Chair

/s/ Lee Rohn

Lee Rohn, Secretary