

Minutes - Goshen Board of Zoning Appeals
Tuesday, May 24 2022, 4:00 p.m.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

- I. The meeting was called to order with the following members present: Lee Rohn, Tom Holtzinger, Bethany Campbell, Hesston Lauver, and Michael Potuck. Also present were Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus.
- II. Approval of Minutes from 4/26/22: Potuck/Rohn 5-0
- III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Lauver/Potuck 5-0
- IV. Postponements/Withdrawals - None
- V. **Use & Developmental Variances** – public hearing items
22-04UV & 22-12DV – Elkhart Township of Elkhart County Indiana and Michael Bontrager request a use variance to allow electrical and plumbing retail sales (no outside storage), all uses permitted in the Commercial B-1 District, and parking and storage of 2 vehicles in excess of one-ton capacity, and a developmental variance to allow a freestanding sign 4' in height and 12 SF in area where only ground signs are permitted, for a fire extinguisher sales and service business. The subject property is generally located at 116 S Greene Road and is zoned Residential R-1 District.

Staff Report

Mr. Deegan provided background information for this property, which is the site of a former township fire station. He explained there are residential uses nearby, as well as a park, a veterinary supply to the south, and commercial uses along Lincoln Avenue.

The petitioner currently operates a fire extinguisher sales and service business and would like to use this property for his business. There will be no change to the footprint of the building and the petitioner would like to use the two vehicle bays to park a small box truck and possibly a trailer. A freestanding sign is also requested for the northwest corner of the property. The petitioner is also asking that future uses of the property allow all Commercial B-1 uses.

Mr. Deegan pointed out that fire stations are allowed in all zoning districts, but use variances are required for the new business and the request to allow B-1 uses. Variances are also required to allow the vehicles which exceed one-ton hauling capacity and are not permitted in residential zoning districts, and for the proposed sign which exceeds the permitted size for the R-1 District.

Mr. Deegan listed reasons Staff finds this request justifiable, noting that approval with conditions and commitments is recommended. He noted for the record that the Planning Office received one call with general inquiries about the proposal, from a representative of nearby neighbors. He stated that representative is present today and can speak to this request if they'd like.

Petitioner Presentation:

Mike Bontrager, 54180 County Road 8, Apt B, Middlebury, spoke to the petition. He stated he had previously run this business from his home outside the City and is now looking for a permanent location. This site became available and because he is a firefighter, this location appealed to him.

Mr. Holtzinger asked if Mr. Bontrager anticipates growing his business.

Mr. Bontrager stated that currently he's the only employee, but that's the reason he's asked to allow a second vehicle. He stated he has one truck and the Chaplin has a trailer they take to fire scenes which is currently stored outside. They've been in discussion about the possibility of storing their trailer in one of the bays. This would also ensure if he ever needs a second truck, he can park it inside the building. Mr. Bontrager also questioned if a dumpster would be permitted.

Mr. Deegan stated a dumpster as described on private property is not reviewed by the Planning Office.

Audience Comments:

Jay Rounds, 1607 Spring Brooke Ct, spoke to the petition. He stated his in-laws reside directly across the road from this property. He stated they are not necessarily opposed to this request, but had the following comments and questions:

- Traffic is not a concern.
- Signage appears to be reasonable.
- Foot traffic to/from school and the park could be a cause for concern.
- Vehicles are currently parked outside at night. Will this continue?
- How many vehicles will be parked during hours of operation and where will they park?
- What are the hours of operation?
- The dumpster should be screened or located behind the building.

Mr. Holtzinger noted that hours of operation are proposed from 7:30 am to 5:00 pm Monday through Saturday.

Chuck Cheek, Elkhart Township Trustee, spoke to the petition. He stated he's trying to sell the building because the City of Goshen has taken over Elkhart Township's fire and ambulance services and it's no longer needed. The problem is this property is zoned R-1 and it would be difficult to convert this building to residential use. He also stated that some of the cars parked on the site belong to the school crossing guards and are there by permission. He noted the new owner will need to decide if that use will continue.

Petitioner Rebuttal:

Mr. Bontrager stated he has no concerns about the crossing guards parking on the property. He also stated that work trucks will be stored inside the building at night, but when he's working his truck will be parked outside. He hopes to one day have an office employee so it's possible there will be another car there during the day.

Mr. Deegan stated that commitment #4 reads "*The two (2) vehicles in excess of one-ton hauling capacity parked or stored on the property shall not exceed 22' in length; they shall be stored inside the building during non-business hours.*" and asked Mr. Bontrager if that accurately described his intentions.

Mr. Bontrager acknowledged that it does.

Mr. Rohn asked if the proposed hours are 7:30am to 5:00 pm.

Mr. Bontrager stated yes. He went on to say he doesn't anticipate much foot traffic there, but smaller customers end up paying more for the truck charge than they do for the actual inspection and work, so he expects that some customers will bring their fire extinguishers in, drop them off, and pick them back up following the inspection.

The public hearing was closed.

Staff Discussion:

There was no discussion amongst Board members.

Action:

A motion was made and seconded, Rohn/Lauver, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 22-04UV & 22-12DV with the 6 conditions and 6 commitments listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

22-05UV & 22-13DV – Pine Manor, Inc., (Miller Poultry), Abonmarche Consultants, Inc. and DJ Construction request a use variance to allow the continued expansion of a non-conforming use, expanding a hatchery in a B-1 District (previous variances 07-09UV, 11-11UV, and 18-14UV) with up to 36,230 Sf of additional building space in four phases with additional parking and maneuvering areas and up to 25 employees, to allow future uses including light assembly and warehousing without manufacturing with up to 25 employees, and a developmental variance to allow the continued expansion to occur without landscaping buffer along the north and west property lines where partial landscaping is required adjacent to residential use, and to allow the variance to be valid until April 6, 2027. The subject property is generally located at 2704 S Main Street and is zoned Commercial B-1 District.

Staff Report

Mr. Deegan described this property along with area uses and zoning, explaining that the hatchery is considered an industrial use and non-conforming in the B-1 zoning district. Today's request for use and developmental variances is for a series of expansions of the hatchery facility and is similar to requests in 2007, 2011, and 2018. Those requests are either partially completed or not complete.

This request is a four-phase expansion totaling over 36,000 SF of new building area, with an anticipated completion date of April, 2027. He explained the first phase has been submitted to Technical Review and is presently undergoing review. He showed Board members a site plan with the remaining three phases. He summarized the variance request as follows:

- New paving for employee parking
- Allowing up to 25 employees at the facility
- Approval of future uses such as light assembly and warehousing with up to 25 employees
- Relief from the partial landscaping requirements along the north and west property lines

Mr. Deegan stated that staff is generally supportive of expanding the non-conforming use, noting the long-term use of the facility has gone without incident and the property is large enough to allow the expansion. He noted Staff's recommendation is to approve with conditions and commitments and read through the list of recommended conditions for approval,

He referred to Condition #1 in the Staff Report, explaining that the variance shall apply to each phase of the proposed expansion approved by zoning clearance by April 6, 2027, noting that any phase included in the proposed expansion not approved by zoning clearance by that date shall require review with a new application to the BZA.

Regarding Staff's recommended commitments, he noted the goal of these suggested commitments is to allow some flexibility, but to also limit the amount of expansion. He explained that Staff recommends denial of the petitioner's request to allow future uses such as light assembly and warehousing, and limiting this approval to allow a poultry hatchery operation only. He also recommended denial of the request to allow expansion to occur without landscaping buffer along the north and west property lines. He pointed out that this is an industrial use which would normally require full bufferyard landscaping. The Planning Office received a letter of support from Len Morris, 2614 S Main Street and Terry Kaeser,

2616 S Main Street, called the Planning Office to voice support of the request and for relief of the partial landscaping. He stated his concern is that the landscaping will cause safety issues along the bike path.

Petitioner Presentation:

J C Schrock, DJ Construction, 3414 Elkhart Road spoke on behalf of the petitioner. He stated this variance request is almost the same as the one that was filed 3 ½ or 4 years ago, following the expiration of a similar variance. He stated the variance approved 4 years ago limited the use to a poultry hatchery only, which limits the use of the property if the hatchery relocates elsewhere. He also gave a brief history of the property explaining there's a long history of agricultural use here.

Regarding the recommended conditions of approval, he stated the landscaping requirement along the north appears to be unnecessary and he provided an electronic photo display showing existing landscaping in the area. He noted that adding this buffer along Pine Manor's property is unnecessary and would only be something else for them to mow around and maintain.

Mr. Schrock pointed out that there is a small parcel, owned personally by Galen Miller, that was not originally included in this application, but following conversations with Planning Staff it was added to the application. Because it's owned individually and not owned by the company, he feels it should not be included in today's request. He pointed out the county GIS shows this small parcel as being 8' into the Pine Manor property when in fact it's located 8' outside the Pine Manor property.

Mr. Schrock asked Mr. Deegan to clarify if he's asking for more trees along the bike path.

Mr. Deegan explained there is residential property to the north and gave an example of when additional landscaping will be required. He referred to a maneuvering area that has been installed without review or approval, and explained when a new area is expanded, landscaping is required between that area and the adjacent residential use. The property to the north contains a single-family home, so landscaping is required. He went on to say the required buffer does not need to extend along the entire property line, but must extend for the area being developed. He also explained that because there are multiple phases here, landscaping may need to be installed in several different areas and at different times. This is the reason the maneuvering area that has been installed now requires additional landscaping. He referred to the site plan in the packets and pointed out that when Phase 4 is constructed, landscaping will be required between the north side of the addition and the south property line of the adjacent property to the north.

Mr. Holtzinger asked what landscaping will be required for Phase 2.

Mr. Deegan stated some landscaping might be required in addition to what is already there, but because there is driving aisle there and nowhere to put the landscaping, Staff might recommend an amended approval allowing them to go without partial landscaping.

Galen Miller, 125 Woodlawn Drive, also spoke to the petition. He stated this has been a difficult decision because they will be spending a large amount of money for a small addition. He stated this request is similar to past requests and when he looks at the upfront cost and Staff's requirements, he's not sure he wants to do this. He stated he feels he and his family have been good neighbors and because they'll be spending so much money, they just don't want to do the other stuff. He also stated that he doesn't want to invest several million dollars and not know if a future use will be permitted.

Mr. Miller provided a letter from Bethany Schools (Exhibit #1 22-05UV & 22-13DV) stating their support of the current BZA request. Mr. Holtzinger read the letter to Board members.

Audience Comments:

Dr. Terry Kaeser, 2616 S Main Street, spoke to the petition. He stated he lives next door and also owns the animal clinic at 2806 S Main Street. He stated he's here to talk about the trees along the north side of

Galen Miller's property as well as trees along the bike path. He stated existing trees between their two properties offer shade and privacy and will just cause clutter and require more maintenance. Regarding the bike path, he noted that it has always been a bit of a problem because there are always things going on there. He explained it's good to be able to see between the trees and be aware what's happening. He'd like to see the area kept open, safe, and secure.

The public hearing was closed.

Staff Discussion:

Mr. Rohn stated he'd like to amend Staff's recommendation and eliminate commitment #5, the requirement for partial landscaping, noting that it's important that residents are able to be aware of their surroundings.

Mr. Deegan pointed out the petitioner has asked that development be allowed to continue without landscaping and by removing the landscaping requirement from Staff's recommendation, the Board is granting the developmental variance as requested by the petitioner. He went on to say if the Board decides to grant relief from the partial landscaping, it needs to be based on the criteria.

Mr. Rohn stated it meets the criteria because he feels there is substantial foliage, i.e. trees and open grassy areas, for safety and security.

Attorney Kolbus asked the Board's comments for commitment #2 which limits the approval to allow a poultry hatchery operation only.

Mr. Rohn stated they can come back to the BZA at a future date and provide more information on a proposed use.

Mr. Holtzinger pointed out that if the property is sold to another person, the new owner may not have the same commitment to Goshen that the current owner has.

Mr. Rohn agreed, stating an open door shouldn't be in place for the next person.

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 22-05UV & 22-13DV with the conditions and commitments listed in the Staff Report, with the exception of removing commitment #5, for the reasons previously stated. The motion passed unanimously by a vote of 5-0.

22-14DV – Walmart Stores and TNT Fireworks request a developmental variance to permit outside sales and display of merchandise (fireworks) from June 16, 2022, to July 5, 2022, 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 Board has heard this request each year since 2014 for outside display and sales of fireworks at the Wal-Mart on Lincolnway East. Because of the B-4 zoning, the outside display and sale of merchandise must be approved by the BZA. He reminded Board members that this was originally approved in 2014 for a period of 10 years, but because Wal-Mart does not allow multi-year agreements, they must come back each year for this approval. He noted that this use has been approved each of the past seven years. Mr. Deegan listed sale dates and hours, noting that this will be similar to previous years.

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, Potuck/Lauver, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 22-14DV with the 5 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

22-15DV - Leatherman Supply, Inc. and Abonmarche Consultants, Inc. request a developmental variance to allow a side (south) setback of 7' where 10' is required for a new loading dock and 354 SF building addition. The subject property is generally located at 2423 Peddlers Village Road & 3016 W Wilden Avenue and is zoned Commercial B-3 District.

Staff Report

Mr. Deegan explained this property contains two parcels, both with the same owner. He pointed out there is residential use and zoning to the north and a large area of nearby commercial use and zoning. Today's request is for a 7' side (south) setback, where 10' is required for a new loading dock and small building addition. He noted Staff supports this request because there is nowhere else to place this dock. He also pointed out that this is a minor encroachment and unlikely to have any negative impact on the neighboring property. He noted this has not been reviewed through Technical Review and because we haven't done a full review it's possible things will come up that will require additional variances by the BZA.

Petitioner Presentation:

Jeffrey Schaffer, Abonmarche Consultants, 303 River Race Drive, spoke on behalf of the petitioner. He stated the building to the west has a tenant and when their lease expires at the end of the year, the owner of Leatherman Supply will take over that building for their own use. This seems to be the best location for the addition, because vehicles can access the loading dock without impeding traffic on Wilden Avenue. He also noted that they are in agreement with all of the recommended conditions of approval listed in the staff report.

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, Potuck/Rohn, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 22-15DV with the 6 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

22-16DV - Brian and Rebekah Whirledge request a developmental variance to allow a rear (west) setback of 2' where 5' is required for a 700 SF accessory building. The subject property is generally located at 913 S 7th Street and zoned Residential R-1 District.

Staff Report

Mr. Deegan explained the petitioner currently uses a room in his house for a home occupation and would like to build an accessory building to work in. He explained that home occupations are allowed in residential properties by right so the use is not under review today.

The new accessory building is proposed with a 2' rear setback where 5' is required by the ordinance. The petitioner would like to preserve yard space and explained that such setbacks are common on adjacent and nearby properties.

Mr. Deegan stated the proposal meets the character of the area, and an existing shed on the subject property has the same setback; however, Staff feels the new building should be in compliance with the ordinance because the property does not justify an encroachment into the setback and meeting the setback requirements would not cause difficulty. He pointed out that while there are nearby properties that don't meet the setback requirements, there are other properties in the vicinity that do meet the requirements for accessory buildings.

Mr. Deegan stated that emails supporting this request were received from owners of 904 S 7th St, 914 S 7th St, 911 S 7th St, and 915 S 7th St.

Petitioner Presentation:

Brian Whirledge, 913 S 7th Street, spoke on behalf of the petitioner. He stated he's a painter and needs more room than what he currently has inside his house. He stated he's asking for the reduced setback because he has a small yard and his family enjoys being outside. He explained there is currently a fence along the alley, so the new accessory building would not encroach any farther into the alley and will be in line with an existing shed on the property. He stated he'd prefer to have three additional feet of yard, instead of three additional feet along the alley that he can't do anything with. He stated he feels the most efficient use of his land is to place the building closer to the fence along the alley, allowing more yard space.

Mr. Potuck asked if the existing fence will remain or if the fence would have to be removed?

Mr. Whirledge stated he thinks he will remove a portion of the fence and use the building as a partial barrier. The other sections of the fence would remain.

Audience Comments:

Dustin Sailor, Director of Public Works and Utilities spoke to the petition. He stated as a representative for the right-of-ways, he supports Staff's recommendation to deny this request. He stated that in this case, the accessory building will be used for an art studio, but it could easily be converted into a garage and for that reason, he would like to see enough room to maneuver within the right-of-way and be able to enter into a garage door.

Mr. Holtzinger asked if other garages in this area are set back more than two feet.

Mr. Sailor stated the garage immediately south is set back farther. He went on to say there have been other instances where the garage is right up against the alley which causes a turning movement issue in the alley. He stated he agrees with Staff's recommendation that they follow the ordinance.

The public hearing was closed.

Staff Discussion:

Ms. Campbell asked if there's a way this can be limited to an accessory building and can't be used as a garage.

Attorney Kolbus stated a commitment can be placed on the approval stating that the accessory building can't be used where vehicles are allowed to enter and exit.

Ms. Campbell stated approving the variance would allow the building to line up with the existing shed. Mr. Holtzinger stated he too noticed it would line up with existing, but after hearing Mr. Sailor's comments he understood about using it as a garage. He pointed out that in this case it might not be a problem because the church parking lot is right behind this property.

Mr. Deegan asked Mr. Whirlledge if prohibiting the use of the structure as a garage in the future would cause him any concern.

Mr. Potuck added that it might be a concern when he's ready to sell.

Mr. Whirlledge stated he has no plans to use this as a garage, but he does have some concerns regarding the potential resale value.

Mr. Rohn pointed out this could limit a potential buyer in the future.

Mr. Deegan stated that the Board could grant an approval by including a commitment that the building cannot be used for vehicles entering or exiting from the public alleyway if it doesn't have a 5' setback. By doing this, the petitioner would have the option of building with the 5' setback which would allow for a garage, or by proceeding with the variance.

Action:

A motion was made and seconded, Campbell/Potuck, to adopt the findings of the Board and based on these findings, approve 22-16DV with the following 6 conditions and 3 commitments:

Conditions:

1. If a Building permit is required, the variance shall become null and void unless a Building permit has been issued and substantial progress has been made within six (6) months of the date of 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. The BZA approval shall be effective when the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff and when all conditions of approval have been met.
4. No zoning clearance form will be issued until the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff and until all conditions of approval have been met.
5. An approved zoning clearance form is required.
6. Approval by the Building and Fire Departments is required.

Commitments:

1. If the variance is not implemented and expires, this Commitment automatically terminates as well, and the Zoning Administrator may execute and record a Termination of Commitment on behalf of the City of Goshen Board of Zoning Appeals.
2. Vehicles shall not enter or exit the new accessory structure from the adjoining public alleyway unless the new accessory building meets the minimum 5' rear setback.
3. No water or sewer is permitted to the new accessory building.

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

VI. Audience Items

None

Mr. Rohn recused himself from the meeting at 5:31 pm.

VII. Staff Board Items

- 6-month extension for 22-01UV, 801 W Wilkinson, from 7/25/22 to 1/25/23

Mr. Deegan stated a group housing quarters was approved earlier this year at 801 W Wilkinson and is currently going through the Technical Review process. A six-month extension is requested to ensure the variance does not expire.

Action:

A motion was made and seconded, Lauver/Potuck to grant a 6-month extension for 22-01UV, 801 W Wilkinson, from 7/25/22 to 1/25/23. The motion passed unanimously by a vote of 4-0.

VIII. Adjournment: 5:32 pm Potuck/Campbell

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Tom Holtzinger, Chair

Lee Rohn, Secretary