

Agenda
GOSHEN BOARD OF ZONING APPEALS
Tuesday, November 22, 2022, 4:00 p.m.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

- I. Roll Call
- II. Approval of Minutes from 10/25/22
- III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record
- IV. Postponements/Withdrawals – any person having business to come before the Board may request postponement or withdrawal at this time.
- V. **Use & Developmental Variances**– public hearing items
22-13UV - The Board of Commissioners of the County of Elkhart, IN and Elkhart County Community Corrections Advisory Board are requesting a use variance to amend variances 89-19UV & 99-4UV to allow offenders with low-level domestic violence convictions to use the center where the previous variances limit inmates to those incarcerated for non-violent crimes only. The subject property is generally located at 201 N Cottage Avenue and is zoned Industrial M-1 District.

22-35DV - Len & Marcia Morris and Solar Energy Systems request a developmental variance to allow approximately 6,463 SF of detached accessory structures where the total building footprint area of all detached accessory structures shall not exceed the building footprint area of the primary residential dwelling of approximately 3,045 SF for the installation of two ground-mounted solar arrays. The subject property is generally located at 2614 S Main Street and is zoned Residential R-1 District.
- VI. Audience Items
- VII. Staff/Board Items
 - 2023 BZA Calendar
 - 16-08UV, Commitment Termination Request
- VIII. Adjournment

Minutes - Goshen Board of Zoning Appeals
Tuesday, October 25, 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: Tom Holtzinger, Hesston Lauver, Michael Potuck, Lee Rohn, and Bethany Campbell. Also present were Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus.
- II. Approval of Minutes from 9/27/22: Potuck/Rohn 5-0
- III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Rohn/Potuck 5-0
- IV. Postponements/Withdrawals
Crystal Welsh, Abonmarche Consultants, 303 River Race Drive, speaking on behalf of Habitat of Elkhart County, requested the withdrawal of petition 22-32DV, 414 River Avenue.

Action:

A motion was made and seconded, Potuck/Lauver, to accept the withdrawal of 22-32DV. The motion passed unanimously by a vote of 5-0.

- V. **Tabled Item** (tabled from September 27, 2022 BZA meeting) – public hearing item **22-12UV & 22-28DV** – Lux Property Corporation and Jones Petrie Rafinski request a use variance to expand a non-conforming use where residential use is not permitted in the Industrial M-1 District, and developmental variances to allow a front parking and driving aisle setback of 5’ where 25’ is required, a 31’ side (south) and 45’ rear (west) yard setback where 60’ is required for yards abutting residential use/zoning, an alternative landscape buffer where full bufferyard landscaping is required adjacent to residential use, and for the variance to be valid for one year, for the installation of a parking and driving aisle. The subject property is generally located at 1013 & 1015 S 9th Street and is zoned Industrial M-1 District.

Staff Report

Mr. Deegan explained this request was tabled last month at the request of the petitioner. He described the neighborhood, noting that there is a mix of residential and industrial uses along this corridor and that this property contains multiple small buildings, most of which are single-family homes. It also includes a mix of residential and industrial zoning and the residential property being discussed today is zoned Industrial M-1, making the use non-conforming. Until recently, street parking appears to have been adequate, but recent changes to the 9th Street right-of-way have eliminated a number of spaces. Because of this, vehicles began parking haphazardly on the vacant property to the south and the property owners installed a stone driveway and parking area on the property without City approval. The City has been working with the property owner to bring it into compliance. The project is currently in Tech Review, but cannot move forward without variances.

The petitioner proposes 10 parking spaces with a 24’ wide driving aisle and hard surface asphalt. A 6’ tall privacy fence and a landscaping buffer along the south property line are also proposed. These changes require a use variance to expand the non-conforming use and developmental variances for a 5’ setback from 9th Street where 25’ is required, and relief from the industrial setback requirements, adjacent to residential use, which he pointed out are not practical. He pointed out the proposed landscape buffer and 6’ privacy fence will provide adequate screening.

Staff recommends approval of the request, including the request that the variance be approved for one year. He noted for the record, two inquiries were received by the Planning Office. One was from a residential property owner and the other was from the manager of a nearby factory. Both were inquiries about the development and neither indicated support or opposition to the request.

Petitioner Presentation:

Matt Schuster, 325 S Lafayette Street, South Bend, spoke on behalf of the petitioner. He explained a representative of Lux Properties is also present today if Board members have any questions for him. He explained this development will not increase the number of residential homes and is only to address parking issues.

Mr. Lauver asked for clarification on the number of proposed parking spaces.

Mr. Schuster stated there is one handicap space and 10 regular spaces for a total of 11 spaces.

Mr. Lauver questioned the reason for the sliding gate.

Mr. Schuster responded that the gate will control the lot so that only tenants can park there.

Mr. Rohn asked about access from the parking lot to the homes.

Mr. Schuster stated a sidewalk is located along the east side of the property, parallel with 9th Street.

Audience Comments:

Myron Grise, 64247 Meadowland Drive, spoke to the petition. He stated he owns the property next door at 1021 S 9th Street. He asked that the fence be mandatory because people using this lot are currently driving through his yard.

Petitioner Rebuttal:

Mr. Schuster stated the fence and landscaping along the south property line will be mandatory.

The public hearing was closed.

Staff Discussion:

Mr. Deegan pointed out that condition #6 requires that the landscaping be installed following the landscape plan that was submitted by the petitioner. He went on to say the fence is shown on the site plan, but was not mentioned in the report.

Mr. Holtzinger stated that the motion should include that the fence and landscaping shall be installed as part of the construction.

Mr. Lauver asked Staff's opinion on the number of parking spaces being made available.

Mr. Deegan stated his inspections have routinely shown between 4 and 6 cars and he also noted this plan meets design standards of the City's zoning ordinance and in order to add more spaces, additional variances would be required.

Mr. Lauver asked if street parking is still available.

Mr. Deegan stated there may be a few spaces, but they may not be 90 degree spaces.

Action:

A motion was made and seconded, Potuck/Holtzinger, to adopt the Staff recommendations as the findings of the Board, and based on these findings, approve 22-12UV & 22-28DV with the 6 conditions listed in the Staff Report, noting that condition #6 shall include a 6' fence as shown on the Site Landscape Plan & Details. The motion passed unanimously by a vote of 5-0.

VI. Developmental Variances – public hearing items

22-29DV – Rex D Tom & Paula Rose Ross request a developmental variance to allow a rear (north) setback of 4’ where 10’ is required for two accessory structures approximately 800 Sf and 192 Sf in area. The subject property is generally located at 1209 Egbert Avenue and is zoned Industrial M-1 District.

Staff Report

Mr. Deegan explained this residential home is located within an Industrial M-1 zoning district, and the petitioner proposes to demolish an old shed on the NW corner of the property, keeping the concrete slab and replace it with a new shed. The petitioner has also added a new shed to the NE corner of the property without City approval. The M-1 district requires a minimum 10’ rear setback for accessory structures and he’s proposing 4’ for the largest of the two sheds, and 6’ for the smaller shed. He explained this request is reasonable because this is a residential use located in an industrial zoning district, so maintaining industrial setbacks are not practical. He pointed out that the 4’ setback will match what existed previously. He reminded Board members that a typical setback for an accessory structure in a residential zoning district is 5’. He stated for the record that there were no inquiries from the public regarding this request.

Mr. Deegan also pointed out there are compliance issues on this property which include a trailer parked on the grass and an unapproved carport. These issues should be resolved within 30 days of approval.

Petitioner Presentation:

Paula Ross, 1209 Egbert Road spoke on behalf of the petitioner. She stated the trailer and carport and being used to store items that are currently in the garage so the garage can be demolished and the new structure built. She also noted that they use the cargo trailer during the summer months to attend swap meets. She asked if they were allowed to keep the trailer.

Mr. Deegan responded that because the property is zoned industrial, they can keep the trailer, but pointed out it must be kept on an improved surface and not in the yard.

Ms. Ross stated that once they get the new building up, the rest can be removed.

Mr. Deegan advised the Board that they might want to adjust the timeframe in which this must be resolved, perhaps when construction is finished, pointing out that would be something Staff would support.

Mr. Rohn suggested it be completed within 30 days post construction.

Mr. Deegan voiced a concern that it’s possible the shed wouldn’t be completed in a timely manner.

Mr. Rohn asked the petitioner if they have a date set for the demo or if they have a contractor.

Rex Tom, 1209 Egbert, advised the Board that he has someone that will do the demolition, but at this time he does not have a contractor lined up to rebuild.

Mr. Deegan asked if he could provide an estimate on when the work would be completed.

Mr. Tom stated he’s trying to find someone that can get it in before the first of the year, but that could be influenced by the weather.

Mr. Rohn asked if Mr. Tom felt this could be finalized by the first of May, 2023.

Mr. Tom agreed that should provide enough time.

Mr. Lauver asked if the 4’ setback is adequate, pointing out the easement along the north property line.

Mr. Deegan stated the easement is an unimproved alley and he feels the 4’ setback is reasonable.

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, Lauver/Potuck, to adopt the Staff recommendations as the findings of the Board, and based on these findings, approve 22-29DV with the 5 conditions listed in the Staff Report, amending condition #5 to read “The unapproved carport shall be removed from the property or receive zoning clearance approval, and the trailer parked on grass shall be parked on hard surface no later than May 1, 2023.” The motion passed unanimously by a vote of 5-0.

22-30DV – Martin Aguilar requests a developmental variance to allow a side (west) setback of 5’ where 8’ is required for the addition of an approximately 408 Sf carport. The subject property is generally located at 1322 E Douglas Street and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained today’s request is for a carport on the west side of the existing home. He noted while this is a large property, the house and single-stall garage stretch across the front of the property, leaving little room for the addition of a carport. The petitioner began construction on the carport without City approval and is here today to get approval of the project. The attached carport requires an 8’ side setback and a developmental variance is required because a setback of 5’ is proposed. Approval is recommended because there is no other location for the carport. He also pointed out that if this carport was detached, a 5’ setback would meet the ordinance requirements. He noted the proposed gravel surface will require Board of Works approval.

Mr. Deegan noted for the record that the owner of 1328 E Douglas contacted the Planning Office with questions related to building code and there was no clear support or opposition to this request.

Petitioner Presentation:

Adrian Aguilar, 1322 E Douglas Street spoke on behalf of the petitioner. He stated they received approval for the driveway extension and thought it also included approval for the carport. He stated the only thing left to do to complete the carport will be to add the roof.

Mr. Rohn asked if this carport will be enclosed.

Mr. Aguilar stated it will be open sided.

Mr. Aguilar provided a written statement from his neighbor at 1325 E Douglas, stating they support this variance 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, Potuck/Rohn, to adopt the Staff recommendations as the findings of the Board, and based on these findings, approve 22-30DV with the 5 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

22-31DV – Michael Stellingwerf & Linda Gerber-Stellingwerf and Jeffrey A Loucks request a developmental variance to allow a 0’ side (north) setback where 5’ is required for the reconstruction and expansion of an approximately 300 SF accessory structure. The subject property is generally located at 2510 S Main Street and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained this single-family home is located on an approximately 1.5 acre property and contains multiple accessory buildings. The petitioners are reconstructing a building by their pool and at 10’ x 30’, will be larger than the original building and the orientation of the roof will be rotated to accommodate solar panels. The original building had a north setback of less than 1’ and the new building will maintain that same distance. The Planning Office has no record of approval for the previous building and the larger building requires a developmental variance because a minimum 5’ setback is required for the accessory structure.

Staff recommends approval of the request, noting that neighboring property owners to the north and south have both provided written support of this request. No additional comments were received regarding this request.

Petitioner Presentation:

Linda Gerber-Stellingwerf, 2510 S Main Street, spoke on behalf of the petitioner. She stated because the pump house was falling in and beyond repair, they decided to rebuild and enlarge so they could add space for the solar panels. She went on to say the area around the pool is heavily wooded and they don’t feel it will change the character of the neighborhood.

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 22-31DV with the 4 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

22-32DV – Habitat for Humanity of Elkhart County, Inc. and Abonmarche Consultants, Inc. request developmental variances to allow a 2’ side (east) building setback where 8’ is required and a 2’ side (west) parking/driving aisle setback where 5’ is required for the construction of a new single family home. The subject property is generally located at 414 River Avenue is zoned Residential R-1 District.

Action:

Withdrawn by the petitioner.

22-33DV – Ruby Rangel & Esequiel Rangel and Dana B Miller request a developmental variance to allow a side (south) setback of 4’ where 8’ is required for the installation of a basement egress window. The subject property is generally located at 1006 S 12th Street and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained this small single-family home is located on a lot which is only 39’ at the front property line and has parking and access from the rear alley. The petitioner would like to add an egress window in the basement, with a window well that would project out 3’ from the side of the home, leaving a 4’ setback to the south property line, where 8’ is required. He noted that the request is warranted, pointing out the window well will be a small encroachment into the side setback, and more importantly, will allow safe egress from the basement. He noted for the record that no inquiries were received by the Planning Office regarding this request.

Petitioner Presentation:

Ruby Rangel, 1006 S 12th Street spoke on behalf of the petitioner. She stated she is familiar with the Staff report and has no comments.

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 22-33DV with the 4 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

22-34DV – Benjamin R Wilson and The Wholesome Tortilla, LLC request developmental variances to allow a canopy constructed of steel rod and channel where all visible exterior walls of rebuilt or altered buildings shall be visually compatible to the historical and architectural style, general design and materials of existing pre-1910 buildings on Main Street between Clinton Street and Jefferson Street, 64-percent window coverage where a minimum of 75-percent of the area between 2’ and 10’ above grade is required to contain clear display windows, and a patio railing extending 10” above the roof line where no part of the roof is permitted to project visibly above the parapet, for the renovation of a building and façade for a new restaurant. The subject property is generally located at 132 N. Main Street and is zoned Commercial B-2 HD DD.

Staff Report

Mr. Deegan explained this one-story building is located downtown and is directly east of the courthouse. The petitioners propose a total rehab of the building in order to turn it into a restaurant. Among the proposed changes are a new commercial kitchen and dining area, a renovated patio area on the roof, and changes to the façade. He pointed out that this property is located in the downtown district overlay that includes architectural standards that require new and altered facades must meet the styles of the pre-1910 buildings on Main Street. He pointed out the BZA heard a similar petition last year for the Goshen News building and explained that was one of four requests to the BZA for these particular standards.

Today’s request will include allowing a steel canopy across the front of the building, a rooftop patio which

would include a railing projecting above the parapet wall in order to meet building code, and expanding the window display area on the first floor. He explained the proposed 64 percent coverage is shy of the minimum 75 percent requirement and also explained that while not part of today's request, a major part of the renovation is removing the exterior veneer and restoring the underlying brick. Mr. Deegan pointed to photos included in the staff report of the window display area in two of the downtown buildings. Additionally, he discussed photos in the packet that were supplied by the Goshen Historical Society which show the building in the photo is not the same as the existing building, meaning the current building is not a historic building. He also noted the postcard photo is ideal when showing what the historic buildings look like. Because this is not a historic building, he feels this cannot easily be restored to historic standards. Based largely upon the fact that this is not a historical building, Staff recommends approval of the request. He pointed out because they are doing brick work, they will be bringing this building more in line with the historic buildings. He pointed out the petitioners are also increasing the window area in an attempt to get closer to the required window coverage. The new canopy will require BOW approval over the City sidewalk and the petitioner points out the steel canopy matches older industrial architecture. No public comments were received by the Planning Office.

Petitioner Presentation:

Rafael Chavez Moreno, 1011 S 14th Street, spoke on behalf of the petitioner. He stated he's been working with the historical society to find out what this building looked like, noting it's been through rough patches, including fires and remodeling. He stated they're hopeful the Board will see that the current façade needs to be removed.

Mr. Holtzinger asked how large the roof-top patio will be.

Mr. Moreno stated it will take up approximately 50 percent of the roof area.

Mr. Holtzinger asked if it will be accessible from the outside.

Mr. Moreno stated it will be accessed from the inside.

Mr. Lauver asked if there was egress from the back.

Mr. Moreno stated there's a short alley that passes by The Olympia and the attorney office.

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/Campbell, to adopt the Staff recommendations as the findings of the Board, and based on these findings, approve 22-34DV with the 7 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

VII. Audience Items
None

VIII. Staff Board Items

- 6-month extension for 2423 Peddlers Village Rd & 3016 W Wilden (22-15DV) from 11/24/22 to 5/24/23

Mr. Deegan explained this is for the Leatherman Supply project that was approved in May, 2022. Because the project hasn't been submitted to Tech Review yet, they're requesting a 6-month extension.

Action:

A motion was made and seconded, Potuck/Lauver, to grant a 6-month extension for 22-15DV (2423 Peddlers Village Road & 3016 W Wilden Avenue) from 11/24/22 to 5/24/23. The motion passed unanimously by a vote of 5-0.

- Staff reminded BZA members that November and December BZA meetings will mean some members will not be available for meetings. Members are asked to contact the Planning Office as soon as possible if they will be absent, so an alternate member can be secured.
- Staff noted that emails were sent to all BZA members advising of an upcoming online training titled FUNDamentals for Citizen Planners 1. Any member wishing to attend should contact the Planning Office to get registered. The Planning Department will pay the registration fee.

IX. Adjournment: 4:50 pm Lauver/Potuck

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Tom Holtzinger, Chair

Lee Rohn, Secretary

LOCATION: 201 N Cottage Avenue
CASE NUMBER: 22-13UV

DATE: November 22, 2022
PREPARED BY: Rossa Deegan

GENERAL INFORMATION

APPLICANT: The Board of Commissioners of the County of Elkhart, IN (owner); Elkhart County Community Corrections Advisory Board (agent)

REQUEST: The applicants request a use variance to amend variances 89-19UV & 99-4UV to allow offenders with low-level domestic violence convictions to use the center where the previous variances limit inmates to those incarcerated for non-violent crimes only

LOT SIZE: ±6.05 acres; ±363' of frontage; depth varies

APPLICABLE ZONING: Industrial M-1

NOTICES SENT: 48

SPECIAL INFORMATION

PUBLIC UTILITIES: Connected to City Water & Sewer

AREA DEVELOPMENT: Residential, institutional, commercial

NEIGHBORHOOD: Chamberlain

THOROUGHFARES: Cottage Avenue

TOPOGRAPHY: Bounded along north property line by Rock Run Creek; large portions of property are located in Zone AE Floodway and Zone AE Fringe of the regulatory floodplain

VARIANCE OF PREVIOUSLY APPROVED VARIANCES

- ◇ 89-19UV – use variance approved a minimum security prison facility on a property zoned Industrial M-1; approved September 26, 1989
 - Condition 3: “No violent criminal may be located in the facility at any one time”
- ◇ 99-4UV – use variance approved expansion of the property by 1.64 acres, expansion of building from approximately 21,000 SF to 42,000 SF, and increase in number of prisoners from 150 to 300
 - Condition 1: “No more than 300 prisoners may be housed at the facility. These individuals shall be incarcerated for a non-violent offenses.”

ADJACENT PROPERTY OWNERS’ SUPPORT, OPPOSITION, AND INQUIRIES

The Planning office has not been contacted by any adjacent property owners regarding this variance. However, the Planning office may still be contacted with questions and statements of support or opposition to the variance between the time of this report’s delivery and the public hearing.

ANALYSIS

The subject property is an approximately six-acre minimum security work release facility located on N Cottage Avenue, south of Rock Run Creek and north of the Norfolk South Railroad. The property is zoned Industrial M-1 and is located east of a City utilities facility and west of industrial and commercial uses. Residential use and zoning are located to the north in the Chamberlain Neighborhood and to the south in the East Lincoln Crossroads neighborhood. The southernmost entry to the Chamberlain Neighborhood is the Cottage Avenue entrance adjacent to the subject property. Improvements on the property include an approximately 41,000 SF building and an asphalt parking and driving area with over 70 parking spaces. A barbed wire fence encloses the west side of the property with the building.

Site history – Planning records indicate that this site was the location of the Richmond Wholesale Catalog Center which was damaged by a fire in 1988. Subsequent variances led to the property’s current use as a work release facility, and are summarized as follows:

- September 1989 – BZA approved a use variance (89-19UV) allowing a minimum-security prison on an M-1 property. Approval included six conditions and an additional list of eleven restrictions suggested by the petitioner. Condition 3 stated that “no violent criminals may be located in the facility at any one time.”
- May 1999 – BZA approved a use variance (99-4UV) that added over one acre to the site, doubled the size of the building to approximately 42,000 SF from 21,000 SF, and allowed an increase in the number of prisoners to 300 from the 150-maximum allowed in the original variance. This variance reiterated by condition that these prisoners are limited to non-violent offenders.
- October 2005 – BZA approved a use variance (05-16UV) increasing maximum number of prisoners to 340.
- August 2006 – BZA approved a developmental variance (06-37DV) allowing construction of a parking lot in the floodplain with a reduced front yard setback
- October 2014 – BZA approved a 600 SF building addition in the floodplain. The purpose of the addition was to add space for drug and banned substance/materials testing.

Proposed changes – The petitioners are proposing to amend the variances approved in 1989 and 1999 that included language limiting prisoners to those incarcerated for non-violent crimes, so that the facility can be used to house individuals incarcerated for low-level violent offenses. They explain that low-level violent offenses include crimes such as domestic battery as a misdemeanor or Level 6 felony. The facility would continue to exclude serious violent offenders as defined in I.C. 35-50-1-2, crimes of sexual violence, and higher-level crimes of domestic violence. Appendix A, submitted by the petitioners, is a proposed list of the offenses that would continue to be excluded. There are no proposed physical changes to the property as part of this request.

Community impact – According to the petitioners, the work release facility provides secure housing and supervision of its inmates while allowing them passes for work, religious services, and therapeutic services. Individuals in the work release program can maintain their current jobs during incarceration, where housing them full time at the county jail can result in job loss and lack of treatment. Such individuals are at a greater risk of homelessness and re-offending after release. The petitioners contend that, if allowed to take part in the work release program, offenders with low-level domestic violence convictions may avoid such a fate while also being separated from the victim(s) of their offenses. Such offenders are not normally a risk to the community at large.

Approval of the variance will likely have a positive impact on the community at large. Goshen’s Comprehensive Plan seeks to strengthen regional land use by working with county organizations and to “enhance participation in county coalitions to address economic, social, and environmental issues” (Land Use 5-1 & 2). The proposed variance amendments will allow continued employment, benefiting both employees and employers, while reducing recidivism and post-incarceration housing issues. The facility will be able to provide step-down services including supervision and therapy so that offenders are less likely to cause harm as they are re-introduced to society.

Neighborhood impact – While the proposed changes seem advantageous to the community at large, their impact on the adjacent residential neighborhood is unclear. Certain facts indicate the changes will have a minimal impact on the area beyond what is already permitted:

- On at least seven separate dates between July 2021 and today, the petitioners and/or their representatives have met, participated in events, or engaged with community members in the surrounding streets, including a meeting to discuss changes at the facility
- The petitioners contend that offenders with low-level domestic violence convictions are usually not a threat to those other than the specific victims of their crimes
- The property is zoned Industrial M-1, and at approximately six-acres in size, is large enough to be developed for an industrial facility. Such a facility may bring greater harm to the neighborhood in the form of truck traffic and pollutants than the existing work release with proposed changes.

- The property will continue to be bounded by the same natural and human-made barriers, including the creek, railroad, and security fence
- Individuals with convictions of serious offences of a violent or sexual nature would continue to be excluded from use of the property
- The work release facility approval has been in place for over 30 years
- The proposed amendments will not increase the size of the facility

There are reasons for caution, however, and Staff recommends approving the variance for a period of five years, after which the request will need to be re-heard at BZA. Reasons for caution include the following:

- It's not clear how the changes to the variance will impact the value of adjacent properties. While the changes in those who use the clinic may be minimal, and perhaps go unnoticed, the perception such use creates may unfairly impact the values of other properties in the neighborhood
- Similarly, the perception of a physical threat posed by inmates of the property, regardless of whether such a threat is realistic, may adversely impact those with properties adjacent to the facility or those who use Cottage Avenue as an access point to the neighborhood

FINDINGS OF FACT

Staff recommends **approval with conditions and commitments** of the use variance to amend variances 89-19UV & 99-4UV to allow offenders with low-level domestic violence convictions to use the center where the previous variances limit inmates to those incarcerated for non-violent crimes only, based on the following:

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.** If approved with the recommended conditions and commitments, the proposed amendments will allow greater access to an incarceration program that reduces recidivism and housing issues while improving employment access and retention; such a change is beneficial to the general welfare. The property will continue to be bounded by natural and human-made barriers, and continue to be served by a security system that protects public safety. *The standard is confirmed.*
- 2. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.** The petitioners contend that offenders with low-level domestic violence convictions are usually not a threat to those other than the specific victims of their crimes. If approved with the recommended conditions and commitments, any possible detrimental impact the amendments will have on the area adjacent to the subject property can be reviewed by the BZA after a period of five years. *The standard is confirmed.*
- 3. The need for the variance arises from a condition peculiar to the subject property.** The subject property has been a work release facility for several decades. The petitioners have identified gaps in their services which, as addressed in this request, will benefit the general welfare. *The standard is confirmed.*
- 4. Strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the subject property.** If approved with the recommended conditions and commitments, the subject property will be allowed to be used at a level that meets the needs of the community corrections services where those needs are not being met by the current variances. *The standard is confirmed.*
- 5. The approval does not interfere substantially with the Comprehensive Plan.** Goshen's Comprehensive plan seeks to strengthen regional land use by working with county organizations and to "enhance participation in county coalitions to address economic, social, and environmental issues" (Land Use 5-1 & 2). The proposed variance amendments will allow continued employment, benefiting both employees and employers, while reducing recidivism and post-incarceration housing issues. The facility will be able to provide step-down services including supervision and therapy so that offenders are less likely to cause harm as they are re-introduced to society. *The standard is confirmed.*

The Grantor, jointly and severally, agree to abide by these 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. 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.

The Grantor, jointly and severally, agree to abide by these commitments concerning the use and/or development of the Real Estate:

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. The variance allowing an amendment to variances 89-19UV & 99-4UV to allow offenders with low-level domestic violence convictions to use the center is approved for a period of five (5) years from the date of approval; at the time the variance expires, it must be reheard by the City of Goshen Board of Zoning Appeals following a new application and a new public hearing.
3. No individual shall be housed, imprisoned, or treated on the subject real estate who is incarcerated for any offenses listed in "Appendix A: Elkhart County Community Corrections Prohibited Offenses: Crimes of Violence – IC 35-50-1-2 and Crimes of Domestic or Sexual Violence".



Looking west across Cottage Avenue



From south side of parking lot looking northeast



Looking north along Cottage Avenue



From intersection of Cottage and Bridge Street looking southwest across Rock Run Creek



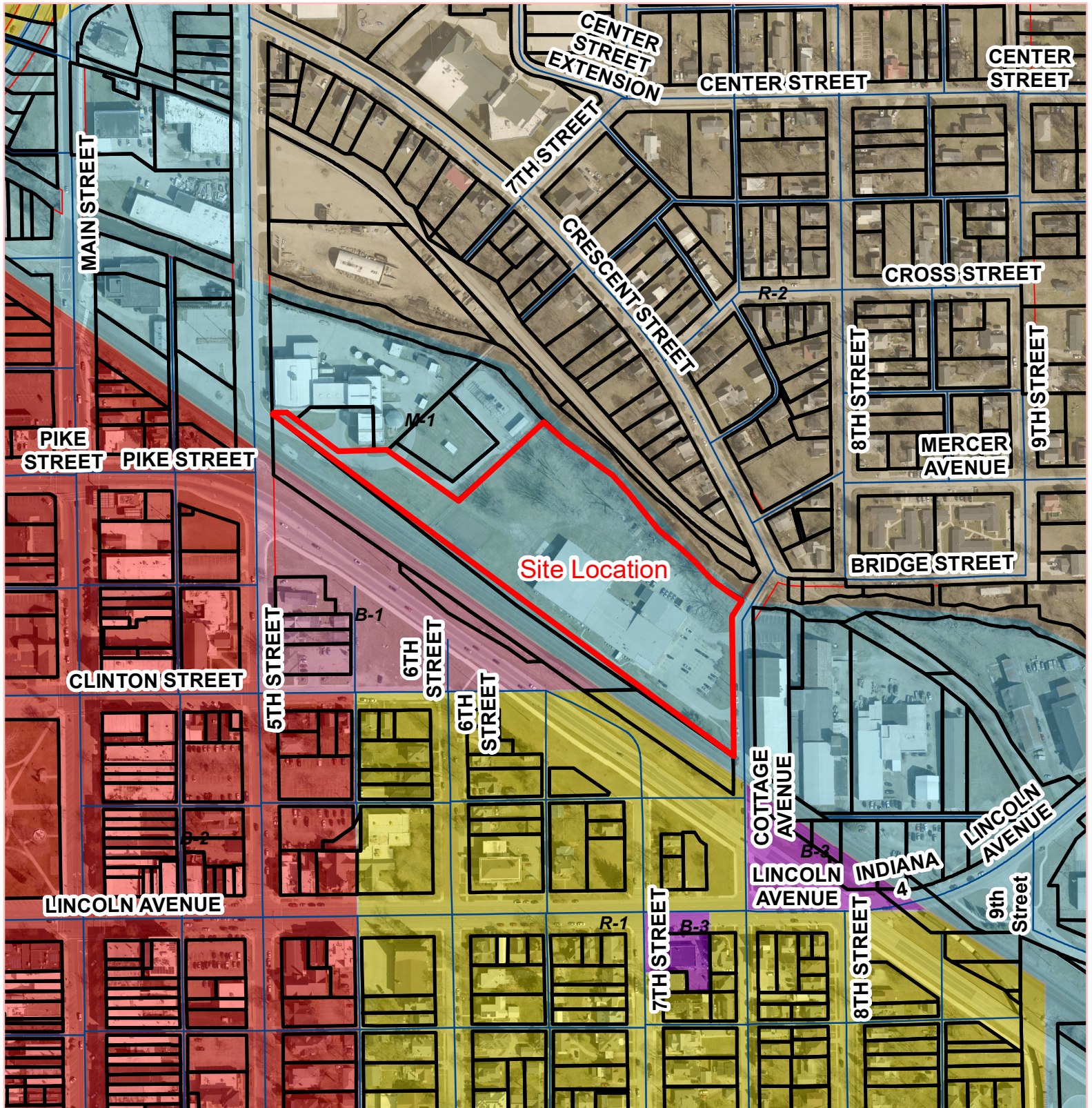
From west side of parking lot looking north; residential properties in background are north across creek



From northwest corner of property looking south



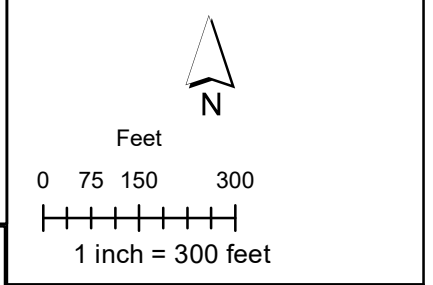
From southwest corner of property looking southeast



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201 N Cottage Ave

2021 Aerial
Printed November 4, 2022



The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626

Goshen Courthouse
101 N. Main Street
Goshen, IN 46526

Judicial Officers

Elkhart County Circuit Court
Michael Christofeno

Elkhart County Superior Courts
Teresa Cataldo, Superior Court 3
Gretchen Lund, Superior Court 4

Magistrates
Eric Ditton



Court Administration Office
Ross Maxwell, Court Administrator
Nathan Tipton, Director of Court Services

Elkhart Courthouse
315 S. Second Street
Elkhart, IN 46516

Judicial Officers

Elkhart County Superior Courts
Kristine Osterday, Superior Court 1
Steven Bowers, Superior Court 2
Christopher Spartaro, Superior Court 5
David Bonfiglio, Superior Court 6

Magistrates
Dean Burton
Elizabeth Bellin, Juvenile Division

IV-D Commissioner
James Fox

Goshen Board of Zoning Appeals
204 E. Jefferson Street, Suite 4,
Goshen, IN 46528

November 1, 2022

Members of the Goshen BZA,

I am writing on behalf of Elkhart County Community Corrections (ECCC) and Elkhart County Community Corrections Advisory Board (CCAB) to request a use variance to amend variances 89-19UV and 99-4UV for the Elkhart County Community Correction's Work Release Facility.

As the primary goal of Elkhart County Community Corrections, and of the Elkhart County criminal justice system as a whole, is to enhance public safety while providing therapeutic interventions to offenders, the need for varying levels of secure supervision in our community is paramount.

The Elkhart County Jail provides secure residential detention for some offenders. On the other end of the spectrum there are also programs of electronic monitoring, home detention, and probation that provide limited levels of supervision. In between those two ends of the spectrum, the Elkhart County Community Corrections Work Release facility is available to provide secure housing and supervision, while allowing offenders passes for work, religious services, therapeutic services, and other outings depending on their level of progress and rehabilitation. However, due to the current zoning ordinances the Work Release Facility is only an option to a *very limited class of offenders*. Currently there are no facilities in Elkhart County that can provide quasi-secure residential or "step-down" supervision to the larger number of individuals that need the secure housing and mid-level supervision Work Release can provide; while undergoing therapeutic interventions and building pro-social behaviors such as employment and community skills.

Accordingly, in an attempt to utilize existing assets of the County, the Community Corrections Advisory Board is seeking a variance of the zoning authorizations currently on file to allow individuals that are undergoing community-based treatment, but need a stable and secure living environment, to receive those services at the Work Release facility.

Current variances (89-19UV and 99-4UV) contain language that the variances were approved, however, with conditions stating that “no violent criminal may be located in the facility at any one time” and “individuals shall be incarcerated for non-violent offenses.” While these conditions make sense on their face in order to protect the community, without clear definitions of violent criminals and non-violent offenses, we have been forced to turn away less serious offense cases causing a gap in supervision and rehabilitation.

The perfect example of offenses falling into this gap are the lowest level misdemeanor and level 6 felony domestic battery cases. As domestic battery is a “person offense,” i.e. an offense where there is an actual person victim, some would consider this a violent offense; thus, not eligible for placement at Work Release. However, it would seem denying their placement Work Release would go against the intended purpose of community safety, as these particular offenders are normally not a risk to the community at large or those outside of their home. Best practices for these offenders would be to separate them from their victim and order them to complete rehabilitative treatment. By not allowing these offenders to be placed at the Work Release facility, only two choices remain.

The first option would be to order them to serve their time in the county jail. While placement in the jail would protect their victim(s) by limiting their access to them for a period of time, they would not receive treatment services at the same level they would in the community. Additionally, they would likely lose any employment and any other positive connections to the community that provided them stability when in the community. This would result in those offenders being released with no employment, no housing, and having completed minimal treatment, which historically has shown to be a recipe for re-offending.

The Second option would be releasing the offender into the community with services and a lower level of supervision. While the offender remaining in the community with supervision allows the offender to be involved in more intensive and a wider variety of services, as well as, allowing them to keep those positive connections to the community like employment, it may put the victim(s) at risk by giving the offender access to victims prior to having completed rehabilitate treatment. Additionally, this option often gives the offender a choice of violating the conditions of their supervision and residing with the victim they are prohibited from having contact with, or being homeless. This choice between violating supervision conditions or instability and homelessness is again a recipe for re-offense and more victims.

The Elkhart County CCAB is not asking for variance that would allow the doors of the Work Release Facility to be thrown open to any and all offenders. Rather, we are seeking a variance that would allow ECCC to accept offenders who are eligible for community based programming and supervision. Serious violent offenders, as defined in I.C. § 35-50-1-2, crimes of sexual violence, and higher level crimes of domestic violence would continue to not be eligible for housing at the Work Release facility (see Appendix A). However, all other offenders of less serious crimes, including those against other persons, such as domestic battery as a misdemeanor or Level 6 felony, would be eligible for supervision and treatment at the Work Release facility,

provided the offender otherwise qualifies for participation in the community based programs offered by ECCC.

Finally, the new administration at ECCC is aware of the effect the presence of the facility has on the local community and neighborhoods. They are also aware that any changes at the facility have the potential to effect those same neighborhoods. As such, this administration has been dedicated to making efforts to build and repair relationships, as well as, make the community aware of potential changes. A brief highlight of efforts made by the administration of ECCC and the CCAB Executive Committee include the following:

- On July 24, 2021, ECCC staff, ECCC participants, and individuals from St. Mark's Church engaged in a neighborhood clean-up and a community cookout.
- On September 25, 2021, ECCC staff, ECCC participants, individuals from St. Mark's Church, and Chamberlain Elementary School organized and engaged in a school supply drive.
- On January 28, 2022, Helen Calvin, Director of ECCC, met with Chris Kingsley, Director of La Casa, to discuss the changes the new ECCC Administration has made and to notify of the changes that would impact them.
- On March 7, 2022, staff from La Casa was invited to tour the ECCC work release facility and to meet ECCC staff.
- On May 4, 2022, Helen Calvin and Vicki Becker, Elkhart County Prosecutor, walked the neighborhood surrounding the work release facility to introduce themselves and provide a flier regarding the Neighborhood Meeting that was scheduled for May 26, 2022. On May 12, 2022, Helen Calvin and Deanna Larios, Asst. Director ECCC, continued to walking the surrounding neighborhood to introduce themselves and provide fliers for the upcoming meeting.
- On May 21, 2022, ECCC staff, ECCC participants, and individuals from St. Mark's Church engaged in a neighborhood clean-up and community cookout.
- On May 26, 2022, ECCC Administration and the CCAB Executive Committee held a neighborhood meeting at St. Mark's church to discuss the changes that would impact the neighborhood.

Ultimately, ECCC and CCAB believe that the effect this change will have on the neighborhood and local community is one of making everyone safer. The reality is that these offenders are already in our community and neighborhoods, but allowing them to be housed in the work release facility would allow for these offenders to receive the needed treatment while be supervised at the appropriate level.

Regards,

A handwritten signature in black ink that reads "Nathan Tipton". The signature is written in a cursive style with a prominent loop at the start of the first name.

On behalf of the Elkhart County CCAB,
Nathan Tipton

Appendix A:

**Elkhart County Community Corrections Prohibited Offenses:
Crimes of Violence – IC 35-50-1-2 and Crimes of Domestic or Sexual Violence**

- **Aggravated Battery** (IC 35-42-2-1.5)
- **Attempted Murder** (IC 35-41-5-1)
- **Battery** (IC 35-42-2-1) as a: Level 2,3,4, or 5 Felony
- **Burglary** (IC 35-43-2-1) as a: Level 1,2,3 or 4 Felony
- **Child Exploitation** (IC 35-42-4-4(b)) or (IC 35-42-4-4(c))
- **Child Molesting** (IC 35-42-4-3).
- **Child Seduction** (IC 35-42-4-7)
- **Child Sex Trafficking** (IC 35-42-3.5-1.3)
- **Child Solicitation** (IC 35-42-4-6)
- **Criminal Confinement** (IC 35-42-3-3, if the victim is less than 18, and the person who confined or removed the victim is not the victim's parent or guardian.
- **Criminal Deviate Conduct** (IC 35-42-4-2) (before its repeal).
- **Domestic Battery** (IC 35-42-2-1.3) as a: Level 2,3,4, or 5 Felony
- **Human Trafficking** under IC 35-42-3.5-1.4 if the victim is less than 18
- **Incest** (IC 35-46-1-3)
- **Involuntary manslaughter** (IC 35-42-1-4).
- **Kidnapping** (IC 35-42-3-2).
- **Murder** (IC 35-42-1-1).
- **Operating a vehicle while intoxicated causing death or catastrophic injury** (IC 9-30-5-5).
- **Operating a vehicle while intoxicated causing serious bodily injury to another person** (IC 9-30-5-4).
- **Possession of Child Pornography** (IC 35-424-4(d) or (e))
- **Promoting Prostitution** (IC 35-45-4-4) as a: Class B or Level 4 Felony
- **Promotion of Child Sex Trafficking** (IC 35-42-3.5-1.2(a) or (c))
- **Rape** (IC 35-42-4-1).
- **Reckless Homicide** (IC 35-42-1-5).
- **Resisting Law Enforcement as a Felony** (IC 35-44.1-3-1).
- **Robbery** as a Level 2 felony or a Level 3 felony (IC 35-42-5-1)
- **Sexual Battery** (IC 35-42-4-8)
- **Sexual Misconduct by a Service Provider** (IC35-44-1.3-10(c))
- **Sexual Misconduct with a Minor** (IC 35-42-4-9) as a Class A,B, or C or a Level 1,2,3,4 or 5 Felony
- **Strangulation** (IC 35-42-2-9) as a Level 5 felony.
- **Unlawful Possession of a Firearm by a Serious Violent Felon** (IC 35-47-4-5).
- **Vicarious Sexual Gratification** (including preforming sexual conduct in the presence of a minor) (IC 35-42-4-5)
- **Voluntary Manslaughter** (IC 35-42-1-3).

1989

P002

89-19UV

approval

GOSHEN CITY BOARD OF ZONING APPEALS
 302 S. Fifth Street
 GOSHEN, INDIANA 46526
 PHONE: 533-8621 Ext. 72

TO: Elkhart County Commissioners - Gordon Lord
130 N. Main Street
Goshen, IN 46526

You are hereby notified that the petition for _____

a variance of use to permit a minimum security prison
facility on property zoned M-1 District.

_____ was presented and considered at the meeting of the Goshen Board of
 Zoning Appeals on September 26 _____, 1989 _____, and was acted upon as
 follows: DENIED _____ APPROVED XX TABLED _____

When the Board's action is one of APPROVAL, the authorization is granted
 contingent upon the following requirements. Deviation from said require-
 ments automatically cancels and terminates the approval or permit. If
 approved, the variance is granted for six (6) months, and shall become
 null and void unless a Building Permit has been issued.

Please find enclosed a copy of the conditions from the
staff for approval.

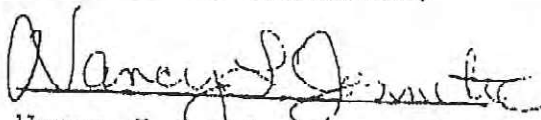
Al made the motion to make a favorable ruling with the following conditions:

1. no more than 150 prisoners may be housed in the facility at any one time - not including jail personnel and staff.
2. the facility shall be connected to City sewer and water.
3. no violent criminal may be located in the facility at any one time.
4. a permanent building for the site shall be reviewed by the B.Z.A. , with subsequent approval of the architectural drawings and
5. traffic entering and leaving through the facility shall be discouraged from traversing through the residential district to the north by the greatest extent possible by prohibiting left turns when approaching the facility.
6. if any additions or improvements beyond the initial construction plans are proposed, the appellants shall come back to the B.Z.A. for subsequent approval.

In point "j", if the population exceeds 150 prisoners, it must go through the public hearing process. The Board also recognizes the petitioners restrictions "a - k", with the striking of the last two words "are contemplated" in point "f". The Board will also direct the Plan Commission to review the public concerns and the traffic issues. Roger seconded the motion, with unanimous approval upon the above conditions.

7. Audience Items - none
8. Staff/Board Items - none
9. Adjournment - unanimous 6:35 P.M.

Respectfully Submitted,



Nancy Jenette, Recording Secretary

(a) Fencing for the facility shall be as exists currently on site, subject of course to maintenance and repairs; no barbed wire is considered necessary at this time, since the real purpose of the fence is to keep outsiders from entering the facility, causing vandalism, interacting with the detainees, etc. The fence is not designed to hold prisoners.

(b) All outdoor lighting will be directed toward the facilities or improvements placed on the project, and sufficient light will exist to illuminate the parking area and building access areas.

(c) Sufficient parking for staff, detainees, and allowed visitors will be at hand, which is seemingly already available given the substantial amount of asphalt already on site.

(d) The existing perimeter green area will, by and large, be preserved. Undesirable under brush may be removed as part of property maintenance and upkeep.

(e) Access to the premises will be controlled. By that is meant the premises will be open to staff and County personnel, detainees, and the minimum number of visitors or guests that a facility of the type in question would contemplate. Stated differently, people allowed on the site will be for "official business only".

(f) No outside speakers or audio system.

(g) There will not be alarms or sirens at the facility.

(h) There will be an outdoor exercise area, in all likelihood to the back or west of the property, which will be closed after dusk, and thus not lighted around the clock, other than perhaps for security reasons.

(i) The occupied portion of the premises will of course at all times be kept free of debris, weeds, trash, etc. Other portions of the property, not developed, may be allowed to grow with grass, trees, shrubs, or other natural growth.

(j) Detainees will not be permitted to loiter on the grounds of the premises, outside the improved facilities. Thus the detainees will either be at the facility, participating in its housing and programming, or be expected to immediately leave the premises, with their own vehicles, or alternate transportation.

(k) It is contemplated that the facility will meet the building and construction standards of the American Correction Association. These are standards generally known in the jail and detention business, which by and large are enforced through the Indiana Jail Inspector's office.

1999 approval

GOSHEN BOARD OF ZONING APPEALS
302 S. FIFTH STREET
GOSHEN, INDIANA 46526
219-534-3600

TO: Elkhart County Work Release Center
201 N. Cottage Avenue
Goshen, IN 46528

You are hereby notified that the petition to allow the expansion of the County Work Release Center to include an additional 1.64 acres of acquired land, expand the building from +/-21,000 square feet to +/-42,000 square feet and to increase the number of prisoners from 150 to 300 for property generally located at 201 N. Cottage Avenue and zoned Industrial M-1 was heard at the meeting of the Goshen Board of Zoning Appeals on May 25, 1999 and was acted upon as follows:

DENIED _____ APPROVED XXX TABLED _____ AMENDED _____

When the Board's action is one of approval, the authorization is granted contingent upon paid proof of publication being on file in the Planning Office, and any conditions placed on the petition by the Board. Deviation from said requirements and conditions automatically cancels and terminates the approval or permit. If approved, the variance is granted for a period of six (6) months, and shall become null and void unless a Building permit has been issued.

The Board approved the variance with the following conditions: 1. That no more than 300 prisoners may be housed at the facility. These individuals shall be incarcerated for a non-violent offenses. 2. Programs including drug, alcohol, and family counseling services shall be permitted at the facility as these programs are part of and related to the overall work release program. 3. A building addition shall be permitted increasing the size of the main or primary building from 21,000 square feet to approximately 42,000 square feet and meet the appropriate developmental requirements, including setbacks, height, and lot coverage. Outbuildings shall be permitted following the developmental requirements for accessory buildings in the Industrial M-1 District requirements. 4. Traffic ingressing and egressing the facility shall be discouraged from traversing through the residential neighborhood to the north and prohibiting left turns when leaving the facility. Any other method available to the Work Release Center to direct traffic

onto Lincoln Avenue is encouraged. 5. Any increase in the number of prisoners or in the size of the building beyond those described in as part of these conditions shall come back to the Board of Zoning Appeals for approval through a public hearing. 6. All conditions A through K (attached) as presented in 1989 by the petitioner shall be incorporated and upheld with this approval. 7. A site plan meeting all developmental standards shall be submitted to and approved by the City Planner.

(a) Fencing for the facility shall be as exists currently on site, subject of course to maintenance and repairs; no barbed wire is considered necessary at this time, since the real purpose of the fence is to keep outsiders from entering the facility, causing vandalism, interacting with the detainees, etc. The fence is not designed to hold prisoners.

(b) All outdoor lighting will be directed toward the facilities or improvements placed on the project, and sufficient light will exist to illuminate the parking area and building access areas.

(c) Sufficient parking for staff, detainees, and allowed visitors will be at hand, which is seemingly already available given the substantial amount of asphalt already on site.

(d) The existing perimeter green area will, by and large, be preserved. Undesirable under brush may be removed as part of property maintenance and upkeep.

(e) Access to the premises will be controlled. By that is meant the premises will be open to staff and County personnel, detainees, and the minimum number of visitors or guests that a facility of the type in question would contemplate. Stated differently, people allowed on the site will be for "official business only".

(f) No outside speakers or audio system.

(g) There will not be alarms or sirens at the facility.

(h) There will be an outdoor exercise area, in all likelihood to the back or west of the property, which will be closed after dusk, and thus not lighted around the clock, other than perhaps for security reasons.

(i) The occupied portion of the premises will of course at all times be kept free of debris, weeds, trash, etc. Other portions of the property, not developed, may be allowed to grow with grass, trees, shrubs, or other natural growth.

(j) Detainees will not be permitted to loiter on the grounds of the premises, outside the improved facilities. Thus the detainees will either be at the facility, participating in its housing and programming, or be expected to immediately leave the premises, with their own vehicles, or alternate transportation.

(k) It is contemplated that the facility will meet the building and construction standards of the American Correction Association. These are standards generally known in the jail and detention business, which by and large are enforced through the Indiana Jail Inspector's office.

LOCATION: 2614 S Main Street
CASE NUMBER: 22-35DV

DATE: November 22, 2022
PREPARED BY: Rossa Deegan

GENERAL INFORMATION

APPLICANT: Len & Marcia Morris (owners); Solar Energy Systems (agent)

REQUEST: The applicant requests a developmental variance to allow approximately 6,463 SF of detached accessory structures where the total building footprint area of all detached accessory structures shall not exceed the building footprint area of the primary residential dwelling of approximately 3,045 SF for the installation of two ground-mounted solar arrays

LOT SIZE: ± 5.5 acres; ± 489' of frontage (± 212' on Main Street; ± 278' on Kercher Road); depth varies

APPLICABLE ZONING: Residential R-1

NOTICES SENT: 29

SPECIAL INFORMATION

PUBLIC UTILITIES: Connected to City water

AREA DEVELOPMENT: Residential, commercial, industrial

NEIGHBORHOOD: None

THOROUGHFARES: South Main Street, Kercher Road

TOPOGRAPHY: Level

VARIANCE OF USE STANDARDS

- ◇ Goshen Zoning Ordinance, *Section 5150*, Accessory Uses
D. For residential uses on a single zoning lot, the total building footprint area of all detached accessory buildings shall not exceed the building footprint area of the primary residential dwelling unit. In calculating building footprint area of detached accessory buildings, swimming pools shall be excluded.

ADJACENT PROPERTY OWNERS' SUPPORT, OPPOSITION, AND INQUIRIES

The Planning office has not been contacted by any adjacent property owners regarding this variance. However, the Planning office may still be contacted with questions and statements of support or opposition to the variance between the time of this report's delivery and the public hearing.

ANALYSIS

The subject property is an approximately 5.5-acre single family residence with frontage on both South Main Street and Kercher Road. The property is largely surrounded by single family homes on both sides of South Main Street and north across Kercher Road. Adjacent properties to the east of the subject property include grain storage silos, the Winona bike and pedestrian trail, and the Norfolk Southern Railroad.

The size of the subject property has increased in recent years. The owners have lived at 2614 S Main since 2013. In 2018, they purchased several adjacent properties to the east, which included 2604, 2606, & 2608 S Main Street, constituting approximately 4 acres of the now 5.5-acre property. In December 2020, a portion of the property was rezoned from Commercial B-1 to Residential R-1, so that now the entire property is zoned R-1.

In December 2020, the BZA approved a use and developmental variance to allow an approximately 831 SF greenhouse to be constructed on the property where such structures cannot exceed 200 SF and a developmental variance to allow the total footprint of all detached accessory structures to exceed footprint of the home. That variance was nullified in July 2021 when the petitioners returned to the BZA with a request for a greenhouse that

was larger (approximately 1,580 SF) than originally planned. The new approval again included a developmental variance allowing accessory structure footprint in excess of the home.

The petitioners are now proposing to add two ground mounted solar arrays to the property. Ground mounted solar arrays count towards accessory structure coverage, and each array will be approximately 429 SF in area, bringing the total footprint of all accessory buildings on the property to approximately 6,463. Because the primary structure (the home) on the property is approximately 3,045 SF, a developmental variance is required.

Staff recommends approval of the request. At approximately 5.5 acres in size, the property is not a traditional residential lot. It is surrounded to the north and south by other residential properties that exceed one-acre in size and are uncommonly large residential lots. There is ample room for additional structures, such as ground mounted solar arrays, without adversely impacting the surrounding residential properties. The proposed arrays will be set back 15' from both the south and east property lines, distances that well exceed the required minimum side and rear setbacks of 5'. Solar arrays are commonly approved by the Planning Department by administrative approval, and are a reasonable use of the subject residential property.

A semi-trailer was parked on the property during the site visit for this report. Semi-trailers are prohibited on residential properties per Section 5110.1F of the Zoning Ordinance. Staff recommends a condition requiring removal of the trailer within 30 days of approval.

FINDINGS OF FACT

Staff recommends **approval** of a developmental variance to allow approximately 6,463 SF of detached accessory structures where the total building footprint area of all detached accessory structures shall not exceed the building footprint area of the primary residential dwelling of approximately 3,045 SF for the installation of two ground-mounted solar arrays, based on the following:

1. **The approval will not be injurious to the public health, safety, morals and general welfare of the community.** The proposed solar arrays are located deep within the property from both the Main Street and Kercher Road frontages. The proposed arrays will be set back 15' from both the south and east property lines and are unlikely to impede ingress and egress to the property. *The standard is confirmed.*
2. **The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.** At approximately 5.5 acres in size, the property is not a traditional residential lot. It is surrounded to the north and south by other residential properties that exceed one-acre in size and are uncommonly large residential lots. There is ample room for additional structures, such as ground mounted solar arrays, without adversely impacting the surrounding residential properties. *The standard is confirmed.*
3. **Strict application to the terms of the Zoning Ordinance will result in practical difficulties in the use of the subject property.** At approximately 5.5 acres in size, the property is not a traditional residential lot. Solar arrays are commonly approved by the Planning Department by administrative approval, and are a reasonable use of the subject residential property. *The standard is confirmed.*

With approval, the following conditions shall apply:

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 and Fire departments is required.
5. The semi-trailer currently parked on the property shall be removed within thirty (30) days of this approval.



11/09/2022 10:02 AM

Looking east across Main Street



11/09/2022 10:02 AM

Looking east from driveway entrance on Main Street



Looking southwest from Winona Trail at proposed location of solar arrays



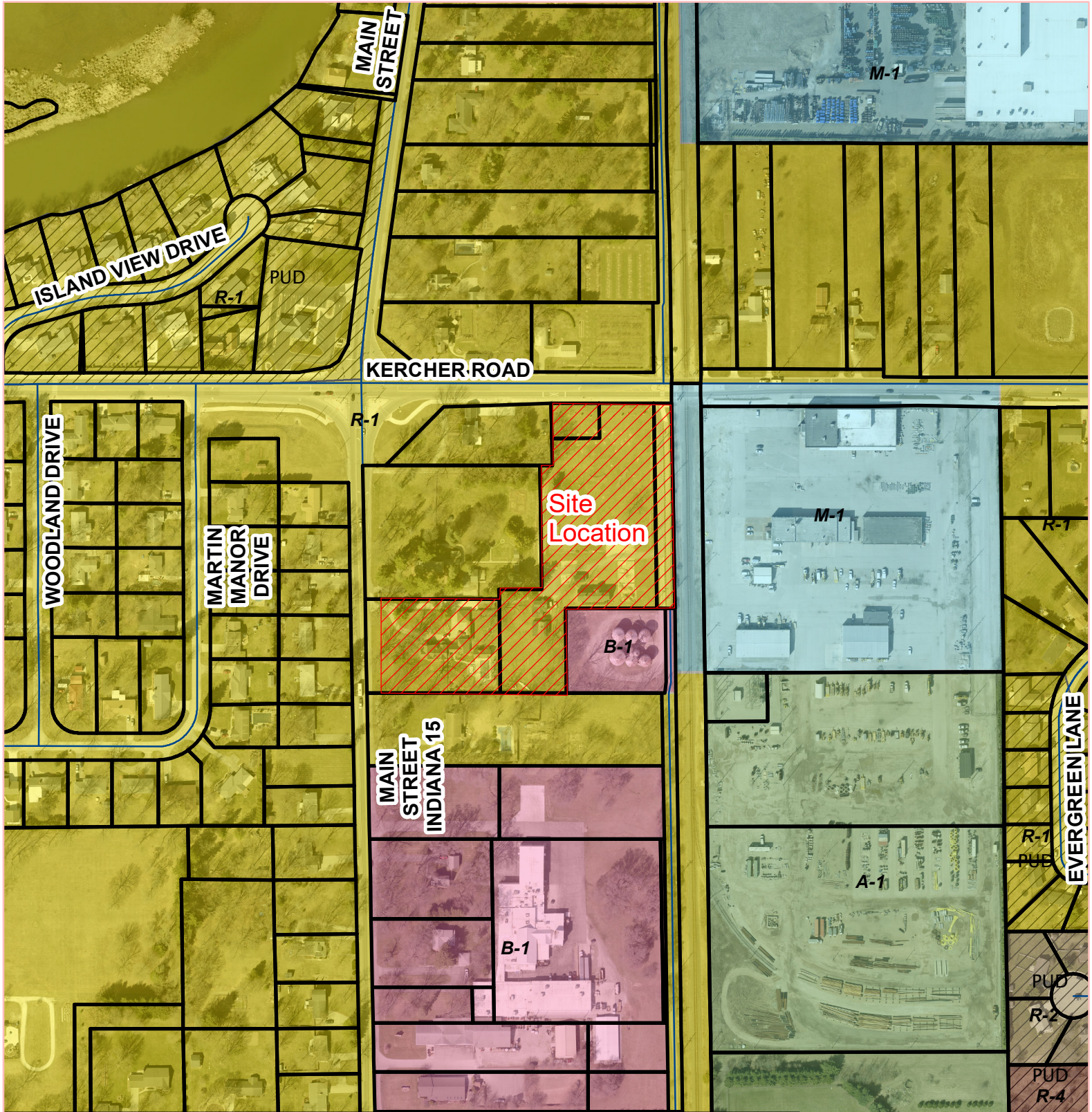
Looking northwest at proposed location of solar array



Looking east at greenhouse under construction approved in 2021



Looking north at semi trailer

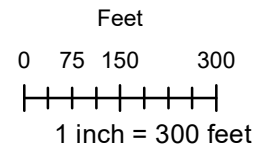


Site Location

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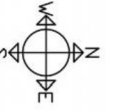
2614 S Main Street

2021 Aerial
Printed November 4, 2022



The City of Goshen
Department of

Planning & Zoning
204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626



Kercher Road

Existing House (Assessor) = 3,045 SF

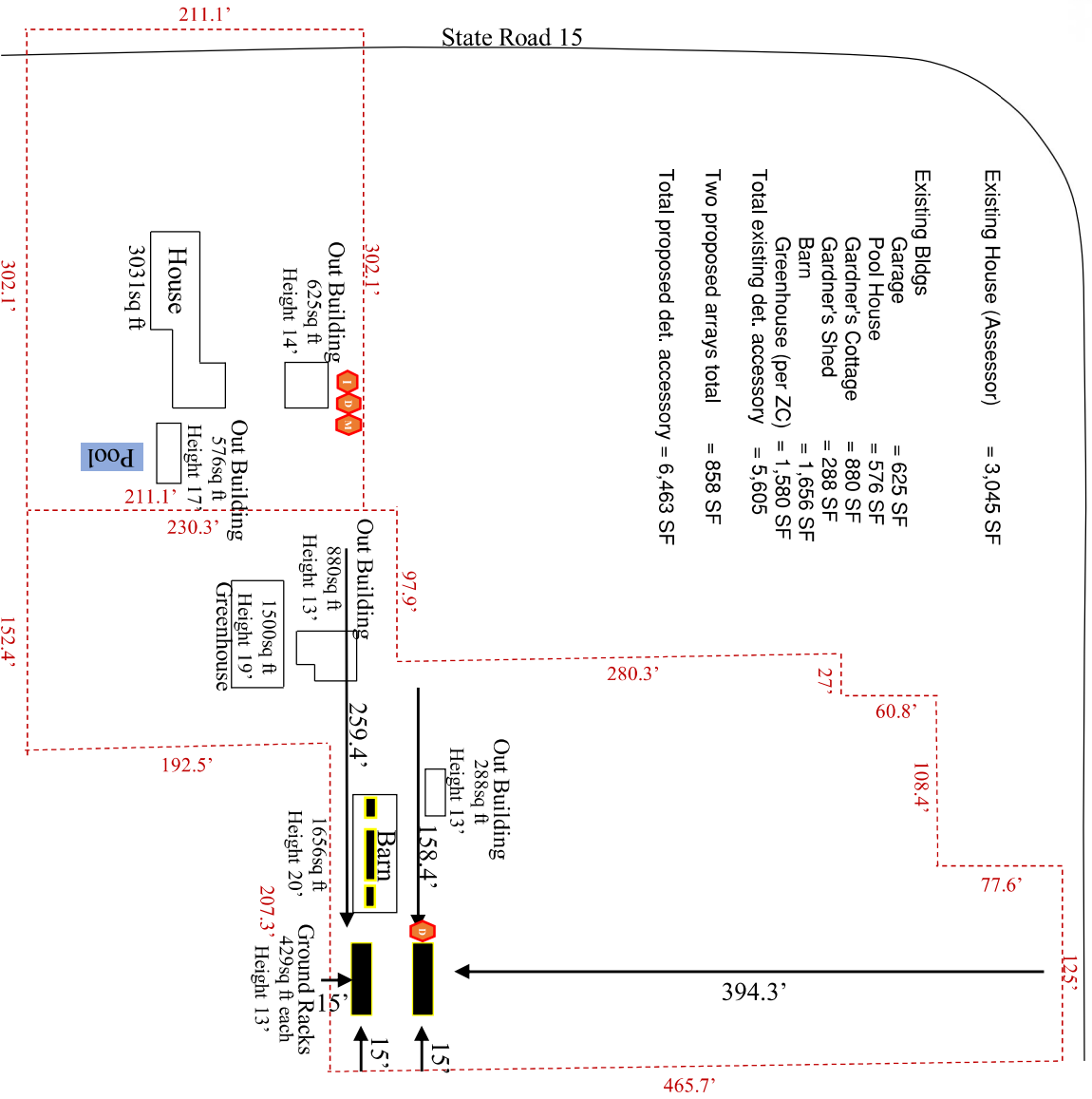
Existing Bldgs

- Garage = 625 SF
- Pool House = 576 SF
- Gardner's Cottage = 880 SF
- Gardner's Shed = 288 SF
- Barn = 1,656 SF
- Greenhouse (per ZC) = 1,580 SF

Total existing det. accessory = 5,605

Two proposed arrays total = 858 SF

Total proposed det. accessory = 6,463 SF



Site Diagram –
Len & Marcia Morris
2614 S Main Street
Goshen, IN 46526
Phone: 574-202-3689

System Details

- (68) 400W Axitec Solar Panels
- (3) 10kW SolarEdge Inverter
- (68) P400 SolarEdge Optimizers

System Amperage - 125 Amps

Solar Array Size:
1,500 sq. ft.

System Cost:
\$47,364.39

Legend	
	Building on Property
	Property Line
	Distance from Property Line to Array
	Roof/Ground Mounted Solar Array
	Meter
	Disconnect
	Inverter



Property Details

Parcel Number: 20-11-27-27-101-003-000-015

Legal Description: 212.9X302.9X212.87X306.24FT IN N1/2 N1/2 NW SEC 27 1.488^a

County: Elkhart Township: Elkhart

PREPARED BY:
Solar Energy Systems LLC
 8015 W 1350 N
 Nappanee, IN 46550

PH 574-773-0546

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GOSHEN CITY PLAN COMMISSION 2023

MEETING DATES

JANUARY	17
FEBRUARY	21
MARCH	21
APRIL	18
MAY	16
JUNE	20
JULY	18
AUGUST	15
SEPTEMBER	19
OCTOBER	17
NOVEMBER	21
DECEMBER	19*

FILING & SITE PLAN DEADLINE

DECEMBER	28, 2022
FEBRUARY	01
MARCH	01
MARCH	29
APRIL	26
MAY	31
JUNE	28
JULY	26
AUGUST	30
SEPTEMBER	27
NOVEMBER	01
NOVEMBER	29

GOSHEN CITY BOARD OF ZONING APPEALS 2023

MEETING DATES

JANUARY	24
FEBRUARY	28
MARCH	28
APRIL	25
MAY	23
JUNE	27
JULY	25
AUGUST	22
SEPTEMBER	26
OCTOBER	24
NOVEMBER	28
DECEMBER	19*

FILING & SITE PLAN DEADLINE

JANUARY	04
FEBRUARY	08
MARCH	08
APRIL	05
MAY	03
JUNE	07
JULY	05
AUGUST	02
SEPTEMBER	06
OCTOBER	04
NOVEMBER	08
NOVEMBER	29

The Plan Commission normally meets on the third Tuesday of each month at 4:00 p.m., and the Board of Zoning Appeals normally meets the fourth Tuesday of each month at 4:00 p.m. Both meetings are held in the Council Chambers, Goshen Police and Courts Building, 111 E. Jefferson Street, Goshen, Indiana. Questions about the filing procedures should be directed to the Planning and Zoning Department at 204 E. Jefferson Street, Suite 4, Goshen, IN 46528; planning@goshencity.com; 574-534-3600.

****Due to the Christmas holiday, the December BZA meeting will follow the Plan Commission meeting.***



Rhonda L. Yoder, AICP
PLANNING & ZONING DEPARTMENT, CITY OF GOSHEN
204 East Jefferson Street, Suite 4 • Goshen, IN 46528-3405

Phone (574) 537-3815 • Fax (574) 533-8626 • TDD (574) 534-3185
rhodayoder@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Goshen Board of Zoning Appeals

FROM: Rhonda Yoder, Zoning Administrator

DATE: November 22, 2022

RE: Request for Termination of Commitment

A request has been received to voluntarily terminate 16-08UV, BZA Commitment 2016-20557, as the use is no longer occurring with no plans for it to continue in the future.

Portions of the original property have been transferred to new owners, and the termination request is from the current property owners.

Per the BZA Rules of Procedure, owners may request a voluntary termination, which is considered by the Board at a public meeting without a public hearing or notice.

If the termination request is granted by the Board, a Termination of Commitment will be executed and recorded.

Staff recommends the termination request for 16-08UV be granted per the request of the current owners.

To: Goshen Planning Office
10 November 2022

Request for Termination of BZA Commitment

The purpose of this document is to request termination of BZA Commitment Case # 16-08UV dated June 28, 2016 regarding grazing and pasturage of pigs located on properties accessed between 314 and 402 Hackett Road.

We request that this variance be terminated completely and permanently.

Signed,

Viola Jean Mast Viola Jean Mast

Elva D. Mast Elva D. Mast

Adam Derstine Adam Derstine 14 Nov 2022

Ben Hartman Ben Hartman

Ben Hartman Rachel Hershberger

Result Letter/Commitment
Case #: 16-08UYDate: June 28, 2016Grantors:
Elva D. Mast & Viola Jean Mast

404 Hackett Road
Goshen, IN 46528Ida Fern Mast, Duane Mast &
Harley D. Mast
66075 County Road 37
Millersburg, IN 46543Grantee:
City of Goshen Board of Zoning Appeals

204 E Jefferson Street, Suite 4
Goshen, IN 46528Adam T. Derstine
211 S 7th Street
Goshen, IN 46526

The following shall be referred to as "the Real Estate":

Common Address: Located on the south side of Hackett Road, with access between 314 and 402 Hackett Road
Current Tax Code #: 20-11-03-301-029.000-015; 20-11-03-301-006.000-015; 20-11-03-328-001.000-015
Legal Description: See Attachment A

The request for a use variance to permit permanent approval of a use variance, approved for three years at the June 25, 2013 BZA meeting, to allow the grazing and pasturage of animals (pigs) with approximate setbacks of 135' to the east, 25' to the south, 0' to the west and 100' to the north where 500' is required from any residential use or residential zoning boundary. Parcel number 20-11-03-301-029.000-015 is requested to be used as access for the Real Estate, zoned Residential R-1 District, was heard at the meeting of the City of Goshen Board of Zoning Appeals on June 28, 2016, and was acted upon as follows:

DENIED APPROVED TABLED WITHDRAWN

When the Board's action is one of approval, the authorization is granted contingent upon any conditions and commitments placed on the petition by the Board. Deviation from said conditions and commitments may result in the City of Goshen Board of Zoning Appeals rescinding the approval or permit.

The Grantors, jointly and severally, agree to abide by these conditions:

1. Deviation from the requirements and conditions of the variance may result in the cancellation or termination of the approval or permit.
2. The BZA approval shall be effective when the executed and recorded Results/Commitment form has been returned to the City of Goshen BZA staff and when all conditions of approval have been met.
3. No zoning clearance form will be issued until the executed and recorded Results/Commitment form has been returned to the City of Goshen BZA staff and until all conditions of approval have been met.

The Grantors, jointly and severally, agree to abide by these commitments concerning the use and/or development of the Real Estate:

1. If ownership of parcel 20-11-03-301-029.000-015 changes, the new owner must execute and record an access easement for the pig grazing.
2. The number of pigs shall be limited to four per acre within the designated area, as shown on the site plan, not to exceed 56 pigs in total.
3. Grazing will be restricted to a half-acre area and used for no more than 20 days at one time.
4. No other animals shall be kept on the Real Estate.
5. There shall be no slaughtering on the Real Estate.
6. There shall be no birthing on the Real Estate.
7. There shall be no mature boar on the Real Estate.
8. Pigs may only be kept on the Real Estate from March 1 to November 30.

9. If the adjacent parcel(s) to the south are developed for residential uses, there shall be a minimum setback of 100 feet, measured from the nearest parcel line to the area where the pigs are located.
10. If it is proven that contamination of the City of Goshen water supply wellfield is coming from this operation, the Grantors are required to return to the Board of Zoning Appeals for appropriate action, including up to revocation of this use variance.

Further, the Grantors, jointly and severally, agree to the following concerning the procedures associated with maintenance and enforcement of this Commitment:

1. That this Commitment shall be recorded in the Elkhart County Recorder's Office.
2. That the Grantors shall give notice of this Commitment, whether recorded or unrecorded, to any subsequent owner and/or any other person or persons acquiring an interest in any portion of the Real Estate.
3. That any subsequent owner and/or any other person or persons acquiring an interest in any portion of the Real Estate shall be bound by the terms of this Commitment even if it is unrecorded.
4. That the City of Goshen Board of Zoning Appeals and/or the City of Goshen Zoning Administrator are authorized to enforce the terms of this Commitment.
5. That any property owner adjacent to the Real Estate or any specifically affected persons listed below are entitled to enforce the terms of this Commitment separately and independently from the City of Goshen Board of Zoning Appeals and/or the City of Goshen Zoning Administrator; specifically affected persons are: None.
6. This Commitment does not automatically terminate upon a legislative body's adoption of a zoning map amendment (a.k.a. rezoning) covering all or any portion of the Real Estate, or a change in the land use on the Real Estate to which this Commitment relates. However, this Commitment and any related variance may be voluntarily terminated in their entirety pursuant to the City of Goshen Board of Zoning Appeals Rules of Procedure.
7. This Commitment may be modified or terminated only by a decision of the City of Goshen Board of Zoning Appeals after public hearing, except as otherwise stated herein.
8. That any and all signatories to this document as a Grantors warrant, jointly and severally, to the City of Goshen Board of Zoning Appeals that all persons having interest in the Real Estate have reviewed this Commitment and have signed this document.
9. This Commitment shall be effective immediately upon execution by the Grantors.

Kelly J. Hill

_____, City of Goshen Board of Zoning Appeals Secretary

Agreed this the 27th day of September 20110 by the following Grantor(s):

Elva D. Mast

 Elva D. Mast

Viola Jean Mast

 Viola Jean Mast

Ida Fern Mast

 Ida Fern Mast

Duane E Mast

 Duane E Mast

Harley D. Mast

 Harley D. Mast

Adam V. Derstine

 Adam V. Derstine

STATE OF INDIANA)
) SS:
 COUNTY OF ELKHART)



Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Elva D. Mast and Viola Jean Mast, and acknowledged the execution of the foregoing instrument this 27th day of September, 20110

IN WITNESS WHEREOF, I hereunto subscribe my name and affixed my official seal,

My Commission Expires: 01.04.2024

Rachel L Wood

Notary Public

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)



Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Ida Fern Mast and Duane E Mast, and acknowledged the execution of the foregoing instrument this 27th day of September, 20116

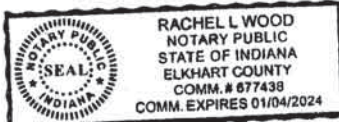
IN WITNESS WHEREOF, I hereunto subscribe my name and affixed my official seal,

My Commission Expires: 01.04.2024

Rachel L Wood

Notary Public

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)



Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Harley D. Mast, and acknowledged the execution of the foregoing instrument this 27th day of September, 20116

IN WITNESS WHEREOF, I hereunto subscribe my name and affixed my official seal,

My Commission Expires: 01.04.2024

Rachel L Wood

Notary Public

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)



Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Adam T. Derstine, and acknowledged the execution of the foregoing instrument this 27th day of September, 20116

IN WITNESS WHEREOF, I hereunto subscribe my name and affixed my official seal,

My Commission Expires: 01.04.2024

Rachel L Wood

Notary Public

I, Lori Lipscomb, did prepare this document and do affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Attachment A

A part of the Southwest Quarter (SW ¼) of Section Three (3), Township Thirty-six (36) North, Range Six (6) East, Elkhart County, Indiana, more particularly described as follows:

Commencing at a stone in the intersection of County Road Number 28 and 128 said stone marking the Northeast (NE) corner of the Southwest Quarter (SW ¼) of Section Three (3), Township Thirty-six (36) North, Range Six (6) East, Elkhart County, Indiana; thence North Eighty-eight (88) degrees, Twenty-four (24) minutes West along the North line of the Southwest Quarter of Section Three (3) and the Centerline of County Road Number 128, One-thousand six hundred thirty-seven (1637) feet; thence due South, Three hundred ninety-six (396) feet to the place of beginning of this description; thence continuing along said described bearing Nine-hundred sixteen (916) feet along an existing property line fence; thence South Eighty-nine (89) degrees, nine (9) minutes East, three-hundred eighty seven and seventy-one hundredths (387.71) feet along an existing property line fence; thence South zero (0) degrees Thirty-three (33) minutes East, One hundred twenty-seven and ninety-five hundredths (127.95) feet along the East side of a fifteen feet lane still maintained; thence South Eighty-seven (87) degrees, Thirty-four (34) minutes East, Two hundred eighty-five and fifty-one hundredths (285.51) feet to an iron stake marking the Southwest corner of Lot Number 51 of Maple Crest 3rd Addition; thence due North along the West line of said addition, Four hundred fifty-seven and eighty-five hundredths (457.85) feet to an iron stake marking the Southwest corner of Lot Number 33 of Maple Crest 2nd Subdivision; thence North zero (0) degrees, Forty-five (45) minutes West, Four hundred seventy-five and sixty-two hundredths (475.62) feet to an iron stake marking the Northwest corner of Lot Number 30 of said Subdivision; thence North Eighty-eight (88) degrees, Twenty-four (24) minutes West, Three hundred thirty-six and thirty-seven hundredths (336.37) feet; thence North zero (0) degrees, nine (9) minutes West, One hundred eight (108) feet; thence North Eighty-eight (88) degrees twenty-four (24) minutes West, three hundred thirty-one and four hundredths (331.04) feet to the place of beginning of this description.

and:

The West half (1/2) of the East half (1/2) of the Northwest quarter (1/4) of the Southwest quarter (1/4), all in Section three (3) Township thirty-six (36) North, Range six (6) East, containing ten (10) acres, more or less.

Subject to all easements and restrictions of record.