

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:

/s/ Lori Lipscomb

Lori Lipscomb, Recording Secretary

Approved By:

/s/ Tom Holtzinger

Tom Holtzinger, Chair

/s/ Lee Rohn

Lee Rohn, Secretary