

Minutes - Goshen Board of Zoning Appeals
Tuesday, July 23, 2024, 4:00 p.m.
Council Chambers, 111 E. Jefferson Street
Goshen, Indiana

- I. The meeting was called to order with the following members present: Lee Rohn, Matthew Fisher, and James Loewen. Also present were Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus. Absent: Hesston Lauver, Tom Holtzinger
- II. Approval of Minutes from 6/25/24: Fisher/Loewen 3-0
- III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Fisher/Loewen 3-0
- IV. Postponements/Withdrawals – none
- V. **Use & Developmental Variances** – public hearing items
24-22DV – Kyle & Allison Stiffney request a developmental variance to allow a fence 6’ in height in the front yard setback along the east property line where fences cannot exceed 4’ in height. The subject property is generally located at 702 S 6th Street and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained the home on this property is currently being renovated and expanded. As part of the renovation they removed a portion of the fence along the east and north property lines and a new 6’ fence is proposed along the east property line. Because a portion of the fence would be located in the front yard setback, a developmental variance is required. He noted that Staff supports this request, pointing out that it’s difficult to place a fence on a corner lot without encroaching into the front yards.

Mr. Deegan advised that the Board of Works recently approved a minor encroachment into the right-of-way, with the stipulation that the fence can be located no farther north than 5’ south of the sidewalk. By doing this, it allows a 10’ vision clearance area for vehicles exiting the alley onto Douglas Street.

He noted for the record that emails in support of this request were received from Gerry Hertzler, 701 S 6th Street and Laura Yoder Moshier, 805 S 7th Street.

Petitioner Presentation:

Bob Thatcher, Reliance Construction, 201 S Main St, Nappanee, spoke on behalf of the petitioner. He also introduced construction project manager Steve Hapner. When asked about the type of fence, Mr. Hapner explained this is aluminum and not a solid fence.

Audience Comments:

None

The public hearing was closed.

Staff Discussion: None

Action:

A motion was made and seconded, Fisher/Rohn, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 24-22DV with the 3 conditions listed in the Staff Report. The motion passed unanimously by a vote of 3-0.

24-07UV & 24-23DV – Goshen First Church Inc. & Professional Permits request a use variance to allow a freestanding sign 8’8” in height replacing an existing second freestanding sign approximately 6’ in height where churches are a conditional use permitting one freestanding sign not exceeding 5’ in height, and a developmental variance to include an approximately 15 SF electronic message center in the sign with a commitment that its display colors will be black and white only where electronic message centers are prohibited in the Historic Core. The subject property is generally located at 214 S 5th Street and is zoned Commercial B-2 HD District.

Staff Report

Mr. Deegan reminded Board members that this property came before the Board in March, 2024. The property is zoned Commercial B-2 HD, and located within the historic district which is an overlay district governing signs. He went on to explain the historic district has two zones, the historic core and non-core areas and this property is located within the historic core. He explained the property has two freestanding signs on the west side of the building and located in the public right-of-way. The northern most sign was approved in November, 1996 by the BZA and the Board of Works (BOW) for its location in the public right-of-way. He noted that current sign standards for churches allow signs no higher than 5’ in height and EMC’s are prohibited in the historic core.

In March of this year, the BZA denied a request from the petitioner to add an approximately 20 sf EMC sign with an overall height of 8’ 1”, and overall area of 34 SF. They have now modified their application with a new proposal. The sign would have an overall height of 8’ 8”, which measures to the top of the proposed lights on the sign. The sign area will be reduced to 25 sf and an approximately 15 sf EMC is proposed in place of the changeable copy portion of the sign. They have also committed to displaying this in black and white only. The overall width of the sign will increase to approximately 9’ 6”. The petitioner’s state the changes are a result of the first BZA decision and neighborhood input since that decision.

Staff supports this request, and as pointed out in the first staff report, the property has two freestanding signs so there will be no lack of display area if the Board denies this request. He pointed out that the sign is located at the less historic end of the building and the general increase in EMC installations in recent years indicates that it’s a relatively reasonable sign use. He went on to say the sign area is less that originally approved by the BZA and the sign will not impede vehicle or pedestrian travel.

Mr. Deegan noted that emails were received today from Megan Hessel, 414 E Purl St, Terri Wentz, 508 S 7th St, and Phil Good-Elliott, 714 S 6th St. All emails were opposed to the request. He also noted that each of these residents are outside the 300’ buffer for notices, noting they are not in direct vicinity of the property.

Petitioner Rebuttal:

Garry Potts, 58171 Dragonfly Court, Osceola, spoke on behalf of the petitioners. He stated the previous request was denied so they took comments from that meeting and met with neighbors. One comment that was received from a neighbor was to make the sign look similar to the one on the corner of the property. In order to do that, the width of the sign increased. They also agreed to use a black background with white letters. He noted the light footprint will be minimal and they agree to any conditions for EMC signs, including light output and hours of operation.

Mr Rohn asked if they have decided on hours of operation.

Mr. Potts stated they will adhere to any city requirements.

Mr. Loewen stated the ordinance calls for a minimum 3 seconds between messages and asked how the messages will appear.

Mr. Potts stated there will be no scrolling, flashing, etc., the current message will disappear and the next message will appear.

Mr. Fisher asked if color will be available on this sign.

Mr. Potts stated that the sign will have the capability of displaying color, but they have agreed to use only black and white.

Mr. Deegan noted that in order to use color on the sign, it would need to come back to the BZA for approval because it was advertised as black and white only.

Mr. Fisher asked how the sign height will relate to the sign at the south end of the property.

Mr. Potts stated it will be similar, but doesn't know if they are the exact same size. He went on to say the 8' 8" for the new sign can be shortened by removing the proposed lanterns at the top of the sign.

Mr. Deegan noted for the record that when the south sign was reviewed in 2023, it was listed as 5' tall with a 16.67 sf sign face.

Audience Comments:

Tony Akens, 212 E Jefferson Street, spoke in opposition to the request. He stated the core historic district regulations allow one non-EMC sign up to 5' in height. In this case, the church already has a variance to allow a second sign which is 6' in height. This variance request would allow the sign to be even taller and include LED lighting. He voiced concerns that if allowed, another variance could be granted allowing color on the sign where this variance does not. He also voiced concerns that allowing this EMC sign will set a precedent for the neighborhood and feels repairing the existing sign is a viable option.

Amy Worsham, 905 S 8th Street, spoke in opposition to the request. She stated she and her husband own the property at 211 S 5th which is across the street. She stated she feels the integrity of the historic core should be maintained and respected.

Nicole Lehman, 311 S 5th Street, also spoke in opposition to the petition. She stated the church already has a variance to allow a second sign which is larger than permitted and the new sign will be 2' larger and although the LED section of the sign is now proposed smaller than originally requested, this will still be an EMC in the historic core. She also voiced concern that a third freestanding sign, 6 sf in area is located on the property for a handicap accessible elevator. She mentioned concerns that they will keep coming back to the board for more and more variances. She's concerned this will set a precedent and more businesses in the area will request variances for EMC signs.

Renee Miller, 212 S 6th Street each spoke to the request. She stated she was originally in opposition to this request, but feels most of her concerns have been addressed by the sign committee. Her only concern at this time is the height of the sign.

Mr. Loewen asked if she's concerned about the total height of the sign which includes lanterns on the top, or if she's concerned about the height of the main portion of the sign.

Ms. Miller responded that in meeting with them, she asked if there was a way to modify the sign so it would be more appropriate to the historic district. She stated this is the result of that conversation, but is concerned with the overall height.

Mr. Potts stated that the EMC sign has LED lighting, but it produces lower light output than a white reader board with black letters. In order to keep the light output as low as possible, they have chosen a black background with white lettering. He explained the overall height can be lowered by removing the lanterns at the top of the sign, but vehicles parked on the street would make it difficult to read the sign if the message board was moved lower.

Mr. Fisher asked if they felt they had neighbor support following the neighborhood meeting.

Mr. Potts stated they felt some still opposed the sign, but this is a method of messaging that the petitioners feel is relevant to the times. He went on to say they're attempting to keep the historic core look, by keeping the black background with white letters and no flashing messaging.

Mr. Rohn asked if there were stipulations on hours the sign can be illuminated.

Mr. Potts stated he will leave that decision to the church.

Loraine Troyer, 56741 County Road 35, Middlebury, spoke to the petition. She stated the church is willing to agree to reasonable sign times. She recommended allowing sign hours from 6:00 am to 9:00 pm and stated they have not discussed a time restriction, but if that's what the Board requires, they will abide by that decision. She went on to say that during the neighborhood meeting, some of the residents understood that the sign in question is the sign on the corner, but that sign will remain unchanged and the second freestanding sign farther north on the churches property is the one being discussed. She also pointed out they need a new sign and a changeable copy sign will be brighter than an EMC sign.

Church pastor, Diana Siegel, 1802 Woodgate Drive also spoke to the petition. She stated a new sign is necessary and this sign will put out less light pollution than a changeable copy sign.

Mr. Loewen asked Mr. Potts how tall the current sign is.

Mr. Potts stated he believes it's around 6' in height. Addressing Mr. Rohn's question regarding display hours for illumination, he feels 7:00 am to 7:00 pm is too restrictive, noting that it's still light out until nearly 10:00 pm in the summer.

Attorney Kolbus asked for clarification, if the sign would be turned off, or just dimmed when not operating. Mr. Potts stated that the lights are auto dimming, but would be completely off after hours.

Steve Pettit, 124 N Front St, Syracuse, also spoke to the petition. He is chair of the council of church. He stated that the sign has the capability of doing color, but as far as he knows the technology does not exist for a black and white sign that can be computer controlled. He went on to say they're locked in to a sign that can do a lot more than they want to do. They're willing to say they won't do that.

The public hearing was closed.

Staff Discussion

Attorney Kolbus advised Board members that there are three members present today and it takes three members to pass a motion. If members cannot reach a unanimous decision today, the matter will be tabled to next month when hopefully all members will be present. The law states they will be able to look at the documents that were submitted and listen to the audio or read the minutes and participate at the hearing. This case would not have to be reheard next month.

Mr. Loewen explained he was happy to see that the proposal is to not permit color and he understands the need to allow easier changing of messages on the sign. He feels any future requests need to be carefully examined. He advised he's inclined to agree with Staff's proposal, but with the additional stipulation that the required 3 second static period be increased to 10 seconds, thereby allowing the message to be displayed for a longer period of time before displaying a new message.

Mr. Rohn agreed with Mr. Loewen, noting he likes this because it doesn't have a rapid change between messages and went on to say he would entertain a restriction on when the sign can be on. He recommended the sign be in use between 6:00 am and 7:00 pm. and asked for input from Board members.

Mr. Fisher commented it's his understanding that the reason the neighborhood doesn't want this sign is because this is the historic core. He's concerned that approval of this sign will lead to more requests.

Mr. Rohn stated a changeable copy sign will likely put out more lumens than the EMC sign and he's looking for some sort of compromise here.

Mr. Fisher questioned how often a message needs to be changed, noting if the entire message doesn't fit on one screen it needs to change in a timely manner so the entire message can be read.

Mr. Loewen feels the suggested cut-off time for the sign seems too early.

Mr. Rohn agreed that in the summer it's not dark until 9:30 or 10:00 pm, but it's dark by 5:00 pm in the winter.

Mr. Fisher acknowledged that if the changeable copy sign is replaced with a new changeable copy sign, it will likely be brighter and will be illuminated 24 hours per day.

Mr. Loewen stated that aesthetically, he feels the proposed sign would be a step up from the existing sign. He went on to say while this might set a precedent, any future cases need to be reviewed individually and if the next applicant submits a proposal that is objectionable, it would be denied. If the proposal seems ok, it could be approved.

Action:

A motion was made and seconded, Loewen/Rohn, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 24-07UV and 24-23DV with the following conditions and commitments:

Conditions:

1. If a Building permit is required, the variance shall become null and void unless a Building permit has been issued and substantial progress has been made within six (6) months of the date of BZA approval.
2. Deviation from the requirements and conditions of the variance may result in the cancellation and termination of the approval or permit.
3. The BZA approval shall be effective when the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff and when all conditions of approval have been met.
4. No zoning clearance form will be issued until the executed and recorded Result Letter/Commitment form has been returned to the City of Goshen Board of Zoning Appeals staff and until all conditions of approval have been met.
5. Approval by the Building and Fire Departments is required.
6. An approved zoning clearance form is required.
7. A building permit is required.
8. Board of Works approval for the new sign is required.

Commitments:

1. If the variance is not implemented and expires, this Commitment automatically terminates as well, and the Zoning Administrator may execute and record a Termination of Commitment on behalf of the City of Goshen Board of Zoning Appeals.
2. The display area on the electronic message center is limited to black and white colors only.
3. The electronic message center portion of the sign must remain static for a minimum of ten (10) seconds.
4. The electronic message center portion of the sign must be turned off between the hours of 8:00 pm and 6:00 am.

A roll call vote was requested with the following outcome: Loewen, yes; Fisher, yes; Rohn, yes. The motion passed unanimously by a vote of 3-0.

VI. Audience Items - None

VII. Staff/Board Items - None

VIII. Adjournment: 4:58 pm Fisher/Loewen

Respectfully Submitted:

/s/ Lori Lipscomb
Lori Lipscomb, Recording Secretary

Approved By:

/s/ Tom Holtzinger
Tom Holtzinger, Chair

/s/ Hesston Lauver
Hesston Lauver, Secretary