

Minutes - Goshen Board of Zoning Appeals
Tuesday, May 28, 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, Tom Holtzinger, Hesston Lauver, Matthew Fisher, and James Loewen. Also present were Assistant City Planner Rossa Deegan and Assistant City Attorney James Kolbus.
- II. Approval of Minutes from 4/23/24: Loewen/Lauver 5-0
- III. Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Fisher/Lauver 5-0
- IV. Postponements/Withdrawals – none
- V. **Use & Developmental Variances** – public hearing items
24-03UV –David & Sara Stump and Judith Inchrauregi request a use variance to amend variance 16-13UV to permanently allow a barbershop in the Residential R-1 District and allow up to four employees where the previous variance permitted the barbershop use until June 24, 2024 and limited the number of employees to two. The subject property is generally located at 211 E Madison Street and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained this property is in a transition area between the downtown and residential areas. The property has been a commercial use since the 1960's, with a use variance granted by the BZA in 2016 allowing a barber shop. The variance limited the use to two employees and stipulated the variance would expire on June 24, 2024. The property had been purchased from the Redevelopment Commission with an agreement that the commercial building would be removed and the land incorporated into the adjacent parcel when the variance expired.

In 2022 the Redevelopment Department dropped that requirement and because the variance is set to expire, the petitioners would like to amend it so they can permanently allow the barber shop use. They are also requesting an increase to the number of employees, allowing four where two were permitted by the previous variance.

Staff supports this request, noting the mixed use in the neighborhood as well as an agreement for parking at a nearby church. He also noted the Planning Office is not aware of any issues or concerns with the barber shop so it's reasonable to allow it to continue.

He did note that Staff has witnessed vehicles parked on the grass along the south side of the parking area so this approval also recommends a commitment that employees park in the church parking lot to free up onsite parking for customers. A condition is also included to re-stabilize the grass in this location.

The Planning Office received no public inquiries or comments regarding this request.

Petitioner Presentation:

Judith Inchrauregi, 58076 Hidden Meadow Trail, Goshen, spoke on behalf of the petitioner. She stated she's familiar with the Staff Report and has nothing to add.

Mr. Loewen asked for clarification if the existing concrete pad will remain.

Mr. Deegan stated the original variance listed this area as one space because the dimensions don't quite meet the zoning ordinance requirements for two spaces.

Audience Comments:

Gina Leichty, spoke to the petition. She stated she owns the property at 324 S 5th Street and she supports this request, but asks that the new stylists and customers are reminded to park across the street at the church and not at the Eyedart property.

The public hearing was closed.

Staff Discussion

None.

Action:

A motion was made and seconded, Rohn/Holtzinger, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 24-03UV with the 6 conditions and 4 commitments listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

24-15DV – Steven & Sherri Deranek, request developmental variances to allow a 10' front yard setback where 25' is required and a 2' side (north) setback where 5' is required for a parking and driving aisle, and to allow a boat and boat trailer to be parked in the front yard where boats and boat trailers shall be parked behind the front line of the primary structure. The subject property is generally located at 306 Hawthorne Drive and is zoned Residential R-1PUD District.

Staff Report

Mr. Deegan explained this single family home has a two-stall garage with a concrete driveway and today's request is to allow a parking area on the north side of the existing driveway. He explained it will be located in the front-yard setback and will have a 2' setback to the north property line. It will be used for seasonal parking of a boat and boat trailer. Developmental variances are required for the front and side setbacks and also because the zoning ordinance requires that boats, RVs, campers, small trailers, etc. must be parked behind the front line of the home.

Staff recommends approval with conditions and commitments. The petitioner states there is not enough space between the home and the north property line to maneuver the boat into a parking space behind the front wall of the home. He went on to say that boat parking is a common use in residential districts and providing a variance to allow it is warranted. He also explained that boat and trailer parking in the front yard setback is a frequent compliance issue, so Staff recommends placing a time limit on this approval. He discussed the recommendations of approval from the Staff Report and also recommended that this parking space be eliminated when no longer needed for the boat parking.

Mr. Deegan also noted that the petitioner appeared before the Board of Works (BOW) last week to ask that gravel be permitted for the driveway expansion. The proposed expansion is in a utility easement and access to buried utilities would be easier. The request was rejected by the BOW, commenting that Staff could approve pavers as an alternate surface type. As part of this approval, Staff recommends an additional commitment be included requiring pavers, not concrete or asphalt. He also pointed out that pavers would be easier to remove if the area is no longer needed for boat parking.

No public comments were received by the Planning Office.

Petitioner Presentation:

Steve Deranek, 306 Hawthorne Drive, spoke on behalf of the petitioners. He stated he has checked Goshen and Elkhart storage facilities, looking for one that has an electrical outlet so he has a way to keep the batteries charged, but has not been successful. Because he couldn't find a facility that offered this, he began looking at the north side of his property as an option, and discovered the easement. He stated the BOW recommended pavers and he's fine with installing them. He stated he's also in agreement with Staff's recommendations.

Mr. Fisher asked if he has somewhere else to store his boat in the winter and Mr. Deranek acknowledged that he does.

Mr. Loewen asked if he has discussed this with his neighbor to the north.

Mr. Deranek stated they first discussed this last fall and again when he had a boundary survey done. He stated the neighbor expressed no concerns. He also commented that he had spoken with several nearby neighbors and none have voiced any concern.

Audience Comments:

None

The public hearing was closed.

Staff Discussion

There was no discussion amongst Board members.

Action:

A motion was made and seconded, Lauer/Fisher, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 24-15DV 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.

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. Use of the parking area approved by this variance shall be limited to May 1st through October 31st of each year.
3. The approved parking area shall be removed and re-stabilized with a vegetative cover when no longer needed to park a boat/boat trailer; at such a time, the variance shall become null and void.
4. Parking in the approved parking area shall be limited to one boat/boat trailer not exceeding 21' in length, 9' in width, and 8' in height.
5. The parking area shall not be used for campers, recreational vehicles, or utility trailers.
6. The parking shall be paving bricks; not concrete or asphalt.

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

24-04UV & 24-16DV – Lorrie A Miller requests a use variance to allow single family dwelling in the Industrial M-1 District where single family homes are permitted in the Agricultural A-1, Residential R-1, R-1S, R-2, R-3, & R-4 districts and are a conditional use in the Commercial B-2 District, and developmental variances to allow no street frontage where a minimum of 70' is required, lot size of approximately 2,492 SF where a minimum of 8,000 SF is required, no direct access to a public street, building coverage of approximately 55% where 50% is allowed, and no onsite parking spaces where a minimum of two are required for the conversion of an existing commercial building to a residence. The subject property is generally located at 1100 Chicago Avenue (cabin) and is zoned Industrial M-1 District.

Staff Report

Mr. Deegan explained that this petition and the one following are for the same petitioner, for adjoining properties in the Old Bag Factory complex. Because they are separate properties, they require separate applications.

This parcel is approximately 2500 sf and contains a cabin with basement and second story, currently being used for a photography studio. It appears the cabin was built in the 1980's, around the time that an illegal subdivision was created. The Old Bag Factory has a variance allowing it to operate with commercial uses. It also has a variance for parking relief, but this particular property is not included in that variance. The petitioner proposes moving the photography studio to the property to the west, which is the subject of the next hearing. This cabin would then become a single family home. He pointed out the packets contain plans for the basement and two stories and a letter from the petitioner, explaining her plans for the building which she plans to use for a short-term rental. He cautioned Board members that it will be reviewed as a single family home and that short-term rentals are not something we review or regulate.

Additionally a developmental variance will be required because the property has no street frontage or access. It will be below the minimum lot size for the M-1 district, the building footprint exceeds 50% as permitted by the M-1 District, and there are no onsite parking spaces where 2 spaces are required for a single family home.

Staff recommends approval if a number of conditions and commitments are included. He pointed out that this site is too small for an industrial use and a mix of commercial and residential uses in the area might make the single family home more appropriate than other commercial or industrial uses. There are several easements in place which allow access to the site and several of the developmental variances are covered by those easements. He discussed the conditions and commitments recommended in the Staff Report.

He noted a letter was provided to Board members from Councilman Brett Weddell supporting this request. The Planning Office also received one phone call from Councilwoman Linda Gerber, also stating support for the request with Staff's recommended conditions and commitments.

Petitioner Presentation:

Lorrie Miller, 21948 Shirley Drive, spoke on behalf of the petitioner. She stated she agrees with the conditions and

commitments recommended by Staff. She also stated she feels this will be beneficial to the surrounding businesses, especially Bread and Chocolate’s nearby wedding venue.

Mr. Loewen stated he observed “For Sale” signs on the property and asked what was for sale.

Ms. Miller responded it was for the Carriage Barn. She also went on to say the sale is contingent on approvals from the BZA to use the building for more than selling antiques.

Audience Comments:

Doug Nisley, 1929 W Lincoln Avenue, spoke in support of the request. He stated he feels this is a very good use for the building. He anticipates it will fit in well with Bread and Chocolate, allowing a close location for guests. He encouraged the Board to pass this request.

Gina Leichty, 412 E Purl Street also spoke in support of the request. She feels it brings economic revitalization and renewed energy to the area. Allowing people to stay there overnight is a benefit to the area by allowing eyes and ears on the site during evenings and weekends.

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 24-04UV & 24-16DV 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. An approved zoning clearance form is required.
4. Approval by the Building and Fire Departments is required.
5. 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.
6. 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.

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. Any future use other than single family residential shall be reviewed by the Board of Zoning Appeals with an application and public hearing.
3. Use of the of property shall be permitted only while a current parking agreement is in place providing a minimum of two (2) parking spaces on private property within 200 feet of the subject property.
4. Residential use of the subject property shall have no impact on the developmental requirements of adjacent properties.

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

24-05UV & 24-17DV – Lorrie A Miller & Patricia Snyder request a use variance to allow Commercial B-3 District uses where Industrial M-1 District uses are permitted, and developmental variances to allow no street frontage where a minimum of 70’ is required, lot size of approximately 3,691 SF where a minimum of 8,000 SF is required, and no direct access to a public street. The subject property is generally located at 1100 Chicago Avenue (Carriage Barn Antiques) and is zoned Industrial M-1 District.

Staff Report

Mr. Deegan stated this is a single tax parcel, adjacent to the parcel in the previous discussion. The building in question appears to be an old machine shop for the Old Bag Factory and has been used recently for commercial uses. It also appears to be an illegal subdivision, similar to the parcel previously discussed. The parcel is zoned M-1 facing similar use and developmental issues as the previous request.

The petitioner would like to use the second story of the building for a photography business and lease the first floor for a

commercial use, such as a store or café. This request is to allow B-3 uses in general for the building. Developmental variances are required for no street frontage, no access, and inadequate lot size. Staff recommends an amended approval with conditions and commitments limiting the types of B-3 uses which would be allowed. He pointed out the property is very small and would not be appropriate for industrial uses, so low intensity commercial uses are more appropriate for this location. Existing easements allow access and utility connections.

He discussed several conditions and commitments recommended in the Staff Report which include that inspections by the building and fire departments is required. He also discussed Commitment #2 which spelled out what uses should be permitted; that no outside storage should be permitted, and that use of the subject property shall be permitted as long as the parking agreement is in place.

Mr. Deegan noted for the record that a letter of support for this request was received from Councilman Weddell and he also received a phone call of support from Councilwoman Linda Gerber.

Petitioner Presentation:

Lorrie Miller, 21948 Shirley Drive, spoke on behalf of the petitioner. She stated she is in agreement with Staff's amended recommendation, including all conditions and commitments.

Attorney Kolbus advised Ms. Miller that even though Staff is limiting the type of uses, if a use comes up that is not on the approved list, she can petition the Board once again for that particular use.

Audience Comments:

Doug Nisley, 1929 W Lincoln Avenue, spoke to the petition. He encouraged the Board to approve this request noting that he feels this will be a great opportunity.

Dustin Sailor, Director of Public Works, spoke to the request. He stated this property shares a water service with the log cabin and he asked for a commitment that the water service be separated from the log cabin.

Mr. Rohn asked if the sanitary was also shared.

Mr. Sailor stated they believe the sanitary is also connected, but that is a bigger issue.

Gina Leichty, 412 W Purl Street also spoke to the petition. She feels this is a positive step forward and asks that the Board approve the request.

Mr. Nisley questioned if the water should be separated even though Ms. Miller owns both buildings.

Mr. Sailor states the way the ordinance reads, because these services are on separate properties, they need separate services.

The public hearing was closed.

Staff Discussion

Mr. Rohn asked if the Board should discuss this with the petitioner or just make it part of the approval.

Attorney Kolbus stated it will be required by the ordinance so he doesn't know anyway around it. He noted it would be added as an additional condition.

Mr. Deegan restated that the condition would be that the water service shall be separate from the cabin.

Ms. Miller stated that during her previous meetings with Planning and Mr. Sailor, it was mentioned that in 2025, Indiana Avenue would be torn up and they might be able to give her the hookup she needs to run the line to the Carriage Barn. She stated they also discussed that if the variances were approved, she could wait until 2025 to run the lines because once the road was torn up, they would be able to give her the new access point.

Mr. Deegan asked Mr. Sailor if it would be acceptable to add a condition that the water service shall be separated no later than 2026 or when the Indiana Avenue project commences.

Mr. Sailor stated that would be acceptable to him and he would like to include that if there is an ownership change it should be reevaluated.

Mr. Loewen pointed out there's always a chance that the 2025 project is cancelled or delayed and what would that mean for this project?

Attorney Kolbus advised it can be added as a commitment that it must be done on or before January 1, 2026. He went on to say if the project is delayed for some reason, she can petition the Board to modify the commitment.

Mr. Fisher asked if the water has to be separated prior to selling one of the properties?

Attorney Kolbus stated his recommendation is that the water be separated prior to January 1, 2026 or upon sale to a third party, whichever occurs first.

Ms. Miller asked for clarification if she would be able to move forward with her plans even though the water will not have to be separated immediately.

Attorney Kolbus stated that the condition will be changed to a commitment allowing her to move forward.

Action:

A motion was made and seconded, Rohn/Lauver, to adopt the Staff recommendations as the findings of the Board with amended conditions and commitments, and based on these findings, approve 24-05UV & 24-17DV with the following conditions and commitments:

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

If approved, the following Commitments shall apply:

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. Permitted uses of the subject property shall be limited to galleries, art and photography studios, fitness studios, offices, beauty and hair salons, retail sales, secondhand stores, grocery stores, variety stores, and restaurants (without drive throughs).
3. Outside storage shall be prohibited.
4. Use of the subject property shall be permitted only while a current parking agreement is in place providing an adequate number of parking spaces on private property within 300 feet of the subject property. Adequate parking shall be determined by the minimum number of spaces required by the Zoning Ordinance for all uses of the property.
5. The subject property shall have separate water service from the adjoining property no later than January 1, 2026, or upon sale to a third party, whichever comes first.

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

VI. Audience Items
None

VII. Staff/Board Items
None

VIII. Adjournment: 4:48 pm Lauver/Rohn

Respectfully Submitted:

/s/ Lori Lipscomb
Lori Lipscomb, Recording Secretary

Approved By:

/s/ Tom Holtzinger
Tom Holtzinger, Chair

/s/ Hesston Lauver
Hesston Lauver, Secretary