

Minutes - Goshen Board of Zoning Appeals
Tuesday, November 26, 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: Hesston Lauver, Tom Holtzinger, Matthew Fisher, James Loewen, and Lee Rohn. Also present were Assistant City Planner Rossa Deegan, Assistant City Attorney Don Shuler, and Youth Advisor Kimberly Cazabal Gonzalez.
- II.** Approval of Minutes from 10/22/24: Lauver/Fisher 5-0
- III.** Filing of Zoning/Subdivision Ordinances and Official Staff Reports into Record: Rohn/Lauver 5-0
- IV.** Postponements/Withdrawals – none
- V.** Discussion of Agenda Order – Mr. Holtzinger explained there is a request to rearrange the agenda, to hear case 24-14UV & 24-34DV first on the agenda and to hear case 24-16UV second on the agenda. Assistant City Attorney Don Shuler will be present for case 24-14UV & 24-34DV only and 24-16UV is being moved because of a time conflict.

Action:

A motion was made and seconded, Fisher/Rohn, to rearrange the agenda as requested. The motion passed unanimously by a vote of 5-0.

VI. Use & Developmental Variances – public hearing items

24-14UV & 24-34DV – Colleen Caskey & David Weaver and Dale Klassen request a use variance to allow a second single family dwelling unit in a detached two-stall garage where only one primary structure is permitted, and developmental variances to allow a side (north) building setback of 1' where 8' is required and a side (north) parking/driving aisle setback of 3' where 5' is required for the construction of the garage and drive approach. The subject property is generally located at 1012 S 7th Street and is zoned Residential R-1 District.

Staff Report

Mr. Deegan explained this R-1 zoned property is located on S 7th Street, with an existing garage at the rear of the property which fronts Cottage Avenue. The petitioners would like to demolish the existing detached garage and construct a larger building in its place. The new building would be 816 sf, would include a two-stall garage and bathroom on the first level, and a living area on the second level. This would be classified in the Goshen zoning ordinance as a single family home. A use variance is required because the R-1 zoning district only allows one single family home on a zoning lot and developmental variances are also required for encroachments into the setback for the structure and the driveway.

Mr. Deegan stated Staff recommends approval of the second single family home, but denial of the setback request. He acknowledged parking will be sufficient with four onsite parking spaces and pointed out the structure will be substantially smaller than the existing home. The petitioners point out the new building will retain the same setback as the existing structure; however, there is ample room to move the structure farther south and meet the setbacks required by the zoning ordinance. He also pointed out the north 6.6 ft of the property is a vacated alley which contains utility poles and Staff is not convinced that this area does not contain a utility easement. He pointed out that it's still unknown if water and sewer can be connected to this structure and those connections are required by the zoning ordinance. Staff recommends a commitment requiring the two building to remain part of one zoning lot and under one owner so they're not sold off with separate owners. No public inquiries were received regarding this request.

Petitioner Presentation:

Dale Klassen, 417 Gra Roy Dr, spoke on behalf of the petitioner. He stated the north setback would not change with this new structure and the only potential conflict would be with the existing utility pole near the garage. He went on to say it was replaced recently by NIPSCO and they didn't appear to have any trouble replacing it. He went on to say if the garage is required to move an additional 7' to the south, it would be nearly on top of a very nice ornamental tree and they would be adjacent to, or on top of, the NIPSCO gas line to the house.

Mr. Holtzinger asked if the garage could be moved part way.
Mr. Klassen proposed a compromise of an additional two feet.

Colleen Caskey, 1012 S 7th Street spoke to the request. She stated she resides on the property and the tree is a very large Cypress tree. She noted there is also a large maple tree nearby.

Mr. Fisher asked for clarification regarding the distance between the garage and north property line.
Mr. Klassen stated it would be 3' to the garage overhang and 4' to the garage foundation.

Audience Comments:

Jonathan Lehman, 924 S 7th Street, spoke in opposition to the request. He stated he feels this is a step backwards and wants this area to remain single family homes.

Mr. Holtzinger asked if an approval with commitments would change his opinion about this.
Mr. Lehman reiterated that he is not in favor of this request.

Petitioner Rebuttal:

Colleen Caskey remarked that this proposal does not include a kitchen. They also looked into adding on to the house, but this appeared to be the best option. The additional space would be used for storage and for any overnight guests.

The public hearing was closed.

Staff Discussion:

None

Action:

A motion was made and seconded, Loewen/Fisher, to adopt the findings of the Board, amending condition #9 in the Staff Report, to allow the side (north) setback to be a minimum of 3'4" where 8' is required, and based on these findings, approve 24-14UV & 24-34DV with the 9 conditions and 2 commitments listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

Attorney Shuler left the meeting at 4:21pm; Attorney Kolbus joined the meeting at 4:21pm.

24-16UV – Goshen Community Schools & Warrick & Boyn request a use variance to amend variance 24-02UV & 24-11DV to allow a portion of required landscaping for an athletic facility to be installed on neighboring properties to the south via an easement and to allow occupancy of the facility prior to the installation of required landscaping. The subject property is generally located at 1730 Regent Street and is zoned Residential R-3 PUD District.

Staff Report

Mr. Deegan reminded Board members that in March of this year, they approved an athletic complex in for this property. He explained this project has begun and the petitioners hope to have the majority of it complete to allow spring sports in 2025. Today's request is to amend the previous variance to allow some of the required buffer landscaping to be placed on residential properties along the south property line. The petitioners would like to join the berm for the athletic complex with the berm for the Cherry Creek development to the south. The projects are both occurring nearly simultaneously and the petitioners would like to place landscaping in the center of the berm slightly off the school property and to allow that planting to occur after the athletic facility is occupied and in use in the spring. He went on to explain that Cherry Creek's portion of the berm installation will occur after the spring sports season has begun and it's anticipated that it will be completed later in the year. He referred to a landscape plan provided in Board members' packets, pointing out that this will not impact the landscaping along the east property line, noting it will be installed along the property line on the southwest portion of the property.

He explained the Planning Office has some concerns about this, including that the Planning Department often addresses dead or dying trees on new construction sites. He noted that with these trees being located on separate properties, he questioned how compliance issues would be addressed and enforced. He went on to say the petitioners have agreed to put an easement in place to address this concern and have worked with the Cherry Creek developers so they can maintain landscaping on property they do not own. They have also proposed to irrigate this portion of the landscaping.

Staff recommends approval with conditions and commitments and he discussed the following conditions and commitments from the Staff report:

(Conditions)

7. The recorded access easement for the shared berm shall be provided to the Planning Department during Technical Review and before occupancy of the athletic facility.
8. All required landscaping shall be installed no later than December 1, 2025; the required landscaping not located along the shared portion of the berm shall be installed before occupancy of the athletic facility.

(Commitments)

2. The berm as shown on "Site landscape plan – baseball/softball," dated 1/18/24, by Barton Coe Vilamaa/Commonwealth Engineers shall be extended to the north end of the parking lot along the west property line, between the sidewalk and the parking lot.
3. The owner of the athletic complex shall be responsible for maintaining all trees as shown on the approved landscape plan.
4. The sidewalk on the southside of the athletic facility parking lot shall be extended westward to the pedestrian/bike path on the west side of the property as depicted in the layout "1730 Regent – recommended sidewalk extension – 11/26/24".

He commented that the sidewalk mentioned in commitment #4 was not mentioned originally, but was brought up later in Tech Review. He referred Board members to a map in their packet which shows a sidewalk along the south parking lot pointing out there is currently a berm between the public pathway and the sidewalk. He explained the City would like to see those two pathways connected. He went on to say this facility was originally approved as part of the neighborhood and would be more accessible to the pedestrians and bicycles, pointing out it would not be accessible to vehicles. This would save pedestrians and bicycles nearly a quarter-mile trip to get inside the facility. He went on to explain that it would not allow pedestrians and bikers inside the fenced in portion of the facility, so it wouldn't give people access when the facility is closed down. He also noted vehicles would still remain unable to get in through the north gate. He stated this would be beneficial in terms of connectivity and bringing the neighborhood into the facility.

Mr. Deegan stated for the record there were no public inquiries or comments regarding this request.

Petitioner Presentation:

Christopher Pottratz, 861 Parkway Ave, Elkhart, spoke on behalf of the petitioner. He stated they have been working with Cherry Creek regarding the top soil issue and they realized that the two properties are both required to have berms with a valley in the middle, so they felt it made more sense to use the top soil and join the two mounds for one large berm. An added benefit would be that it creates more buffer and barrier between the two developments. Moving the landscaping to the top of the mound would place it on Cherry Creek's side of the property line. Because of the timing, that landscaping can't be installed until the fall of next year, but the baseball and softball fields should be ready for activity this spring.

He also commented the school has security concerns regarding the extension of the sidewalk, mainly that there would be after hours access to the parking lot. They want to know that access to the area is limited when there are no events taking place. He pointed out if a gate was installed, they could walk around it and if that's the case, they would need to place a fence all around the property line to secure it.

Mr. Fisher questioned what would stop a pedestrian or biker from accessing this area even if there's not sidewalk.

Mr. Pottratz agreed that someone would be able to access the property from there. He stated he feels the berm is a less deterrent, but hopes once the trees grow in, it will help keep people out. It will depend on where the trees are located and if it makes sense to add the fence. He went on to say that Cherry Creek's property is the only one impacted and Tonya Detweiler is here and supports this request.

Mr. Loewen commented that the landscape plan provided in the packets indicates that 36 of the trees are Serbian Spruce and he's concerned that this species is not native to this county and would like the petitioner to consider Eastern Red Cedar trees in this project.

Mr. Pottratz acknowledged he is not a tree expert, but he can present this comment to the school system for their input.

Regarding the easement, Mr. Rohn asked who is responsible for irrigation, maintenance, and caring for the new trees and vegetation.

Mr. Pottratz commented that the signed easement agreement is included in the packet, but explained the maintenance of the irrigation system, trees, etc., is the responsibility of the school system.

Audience Comments:

None

The public hearing was closed.

Staff Discussion:

None

Action:

A motion was made and seconded, Lauver/Fisher, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 24-16UV with the 8 conditions and 4 commitments listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

24-33DV – SLM Management, LLC requests a developmental variance to allow an illuminated roof mounted sign 149 Sf in area where roof mounted signs are prohibited. The subject property is generally located at 119 W Clinton Street and is zoned Commercial B-2 HD.

Staff Report

Mr. Deegan explained this commercial B-2 property contains a pawn shop and is located in the historic district overlay, which regulates signs. The petitioner would like to add an approximately 149 SF roof mounted sign to the west side of the building. He explained roof mounted signs are prohibited in all zoning districts. He went on to say staff recommends an amended approval, explaining that the building has a mansard style roof, with the lowest plane being almost vertical; comparing it to a wall. For this reason a sign could be placed on the center of the lowest plane and the sign wouldn't project above the top of the roof. He did note that the proposed 149 SF is too large, pointing out the historic district allows wall signs a maximum of 75 SF and because staff compares this to a wall sign, it's reasonable to keep this sign no larger than a permitted wall sign would be.

No public comments were received by the Planning Office regarding this request.

Petitioner Presentation:

Dan Mackowiak, 3625 Courtland Drive, Oakford, IN, was present on behalf of the petitioner.

Mr. Holtzinger asked for clarification of the address, noting that the letter supplied to Board members from Mr. Mackowiak referenced the property along 2nd Street instead of 3rd Street.

Mr. Mackowiak acknowledged that the property is located along 3rd Street.

Mr. Fisher questioned the sign dimensions requested by the petitioner.

Mr. Deegan explained sign dimensions are computed using a simple rectangle area and not the area of each individual component of the sign.

Mr. Lauver asked how they will meet Staff's recommendation regarding the size of the sign.

Mr. Mackowiak stated they will adjust to meet the maximum allowed.

Mr. Holtzinger asked if the sign will be illuminated.

Mr. Mackowiak acknowledged that it will.

Audience Comments:

Felipe Merino, 214 N 3rd Street, spoke to the request. He questioned how the sign will be positioned and what type of lighting will be utilized.

Mr. Mackowiak responded that the sign will be at an angle and it is not LED. The sign will be back-lit and will not flash.

Mr. Deegan pointed out that the Commercial B-2 district permits illuminated signs, even if they're adjacent to residential properties.

The public hearing was closed.

Staff Discussion:

None

Action:

A motion was made and seconded, Rohn/Loewen, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 24-33DV with the 5 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

24-12UV – Goshen Community Schools and Goshen Interfaith Hospitality Network request a use variance to replace variances 22-01UV & 23-01UV to permanently allow group housing quarters for temporary emergency housing where group housing quarters is a conditional use in the Residential R-1S & R-3

Districts and a permitted use in the Commercial B-3 District, and to increase the maximum number of occupants from 29 to 48, including 43 residents and 5 staff. The subject property is generally located at 801 W Wilkinson Street and is zoned Residential R-2 District.

Staff Report

Mr. Deegan reminded Board members that in January, 2022, they approved a group housing quarters use in this former school. The use variance specifically approved temporary emergency housing and the approval limited occupants to a total of 29 which included staff members. The temporary approval also required this request to return for Board approval in three years. The petitioner is here today to ask for permanent approval of the variance and to increase the total number of occupants to 48. Staff recommends approval of the request with conditions and commitments. He reminded Board members that during the 2022 hearing, several neighbors voiced concerns regarding this use. He noted today's packets contain two letters of support from neighboring residents, and two more letters of support have been distributed prior to this meeting. Staff also received an email from another neighboring property owner supporting the request. He went on to say Staff has visited the site on numerous occasions and noted how quiet it was both inside and outside the building. He pointed out there is ample parking on the property and the majority of the occupants are children. Mr. Deegan noted there was one additional inquiry from Marty Coppens, 610 Chicago Ave who stated there are some LED lights that have recently been installed on the exterior of the building. He asked that they be adjusted downward on the property.

Petitioner Presentation:

Mindy Morehead, 801 W Wilkinson Street, spoke on behalf of the petitioner. She stated since obtaining the variance, they have served over 242 individuals in the shelter, with over 150 being children. She went on to say they have a 92% success rate and work hard on providing a safe, clean environment, and being good neighbors. She stated the lights were gifted to them by Moyer Electric and they can be easily adjusted downward.

Mr. Holtzinger asked if they have a waiting list.

Ms. Morehead stated they don't do a waiting list, but accept calls every day. She also noted they turn away nearly 300 people every month.

Alan Metcalf, Goshen Community Schools, also spoke to the petition. He stated a great number of the residents are students, and several students are picked up there each day.

Mr. Loewen asked how they plan to notify area residents about any quarterly meetings.

Ms. Morehead advised they intend to notify residents via a neighborhood Facebook page.

Audience Comments:

Felipe Merino, owner of 416 Westfield, spoke to the petition. He voiced his support for this project, noting that his tenants have not had any problems or concerns with this facility.

Andy Murray, Board member of First Light Mission, spoke to the petition. He stated the need is greater now than it was when the shelter was originally approved and asked that this request be approved. He went on to say he's been part of the neighborhood meetings and have heard multiple comments from neighboring residents supporting this shelter. He also noted that Ms. Morehead strives to be a good neighbor and has shown a willingness to continue being a good neighbor. She continues to make investments in the facility so it can be an upstanding part of the neighborhood.

Jim Dryer, Executive Director of Downtown Ministries, spoke to the petition. He stated he's a former board member of First Light Mission and stated that Mindy has made a great impact on the community and wants to confirm what Mindy has said about the need for housing. He agreed that more beds are needed.

Gayle Hendershot, Director of Social Services at Goshen Salvation Army also spoke in support of the request. She stated they have partnered with Goshen Interfaith and First Light Mission throughout the years and they've been excited to see the forward movement and confirmed that emergency housing and shelter is a real need in the community. She stated they work closely with Mindy and her staff and they're excited to see them offering additional services to the community.

Jeremy Stutsman, LaCasa, also spoke in support of the request. He stated that Mindy and her team have done a phenomenal job at this site and he fully supports this request.

The public hearing was closed.

Staff Discussion:

None

Action:

A motion was made and seconded, Fisher/Holtzinger, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 24-12UV with the 6 conditions and 4 commitments listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

24-13UV – D & C Miller Holdings, LLC & Forensic Coffee Company, LLC request a use variance to allow two non-permanent food vendors to operate at separate times of day on the subject property where no more than one conditional use permit for a non-permanent food vendor is permitted for a particular zoning lot at any one time. The subject property is generally located at 1501 Elkhart Road and is zoned Commercial B-3 District.

Staff Report

Mr. Deegan explained this property is located along a commercial corridor and contains an appliance store and an ice machine. There is also a food truck vendor with a conditional use permit issued by the Planning Office that operates here on nights and weekends. He went on to explain that food trucks are classified in the zoning ordinance as non-permanent food vendors and they're allowed to operate on properties zoned B-3 and B-4 when they meet a set of 15 conditions. One of the conditions is that only one permit will be issued for a zoning lot at a time. Permits are issued on an annual basis and only one permit is issued for a property each year. He also explained the property owner must authorize a vendor to operate on the property. A use variance is required because the petitioner is proposing to have two food vendors on the property.

Mr. Deegan pointed out that if the Board does not grant approval, the appliance store, ice machine, and one food vendor can continue to operate. Regardless, staff recommends approval, pointing out that there is ample room for a food vendor to operate and there won't be any conflict because they'll be operating at separate times. He pointed out that unlike most commercial properties along this corridor, this property also has a significant amount of street frontage.

The Planning Office was not contacted by the public regarding this request.

Petitioner Presentation:

Hope Stutzman, 18470 County Road 24, Goshen, spoke on behalf of the petitioner. She stated she would only be present on the property in the mornings and it's her understanding the current food truck is only onsite Friday and Saturday evenings.

Mr. Rohn asked what hours she intends to vend.

Ms. Stutzman responded that she would like to begin vending four days per week, from 6:30 am to noon, Monday through Friday.

Mr. Holtzinger asked if she has future plans to offer cooked or baked food.

Ms. Stutzman replied that she doesn't want to cook onsite, but would like to offer baked goods at some point.

Audience Comments:

None

The public hearing was closed.

Staff Discussion:

Mr. Deegan clarified for Board members if this request is approved, the variance would carry forward, allowing two food trucks to operate on the site and the property owner will decide who is allowed to vend.

Action:

A motion was made and seconded, Loewen/Lauver, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 24-13UV with the 3 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

24-15UV – First Brethren Church of Goshen, Inc., Downtown Ministries, and Signtech Sign Services request a use variance to allow use of an existing church for a social services organization where business offices are a conditional use in the Commercial B-1 District and a permitted use in the B-2, B-3, B-4, and Industrial M-1 & M-2 Districts, and to allow a third non-illuminated freestanding sign 4' in height and 10 Sf in area where churches are a conditional use allowing a maximum of one freestanding sign. The subject property is generally located at 215 W Clinton Street and is zoned Residential R-3 and Commercial B-2 District.

Staff Report

Mr. Deegan explained the petitioners are a social services agency and would like to operate in the church building during non-church hours. A use variance is required because this is considered an office use, which is not permitted in the Residential R-3 district. Also proposed is the installation of a third free-standing sign approximately 4' in height and 10 SF in area. He went on to say that churches are only permitted one free-standing sign so this will also be part of the variance request. He pointed out that the social services use is existing, but the church was not aware it required a use variance until discussion arose regarding a new sign.

Staff recommends an amended approval, noting the office use is acceptable, and that ample parking is available. The request for a third free-standing sign should be rejected, pointing out that one of the existing free-standing signs is a changeable copy sign which could be utilized or a sign. A sign could be added to the door which would not require Planning review. He noted for the record that the Board of Works (BOW) denied a request to allow placement of a sign in the City right-of-way, so if the Board approves the sign, it will need to be placed on the church property and will need to meet setback requirements.

There were no inquiries from the public regarding this request.

Petitioner Presentation:

Todd Lehman, 1508 Bashor Road, Goshen, spoke on behalf of the petitioner. He stated following the BOW's denial for a sign in the public right-of-way, his client began discussing adding a sign to the building and is now focused on getting the ministry use approved.

Mr. Deegan pointed out a sign on the door would not need to be reviewed by the Planning Office, but because there is an existing sign on the building, a new wall sign would require a variance.

Audience Comments:

Austin Kaufman, pastor at First Brethren Church, spoke in support of the request. He stated they hope to continue their partnership with Downtown Ministries and weren't aware they needed approval for this use. He stated they want their church to be an asset to the community and would like the ability to use the church building throughout the week.

The public hearing was closed.

Staff Discussion:

None

Action:

A motion was made and seconded, Lauver/Fisher, to adopt the Staff recommendation of an amended approval for 24-15UV, allowing use of an existing church for a social services organization and to deny a third non-illuminated freestanding sign, with the 4 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

24-35DV – The City of Goshen Department of Redevelopment, Mildred Orama, and Prominence Builders request developmental variances to allow development of a lot with an area of approximately 4,005 Sf where a minimum of 6,000 Sf is required and a width of approximately 30' where a minimum width of 50' is required at the established front lot line, a side (south) building setback of 5' where a minimum of 6' is required, a side (north) parking/driving aisle setback of 2' where 5' is required, and a ground floor area of approximately 440 Sf where a minimum of 720 Sf is required, for a new single family home. The subject property is generally located at 417 S 3rd Street and is zoned Residential R-3 District.

Staff Report

Mr. Deegan explained this is a vacant through lot, with frontage on S 3rd Street and also on River Race Drive. The lot previously contained a single family home and a detached garage. In 2017 those structures were demolished under the ownership of Goshen Redevelopment. Today's request is for a two-story, single-family home which will need developmental variances for the following:

- Lot size approximately 4,000 sf where 6,000 sf is required;
- Frontage of approximately 30' where 50' is required;
- Approximately 440 sf of living space on the 1st floor where a minimum of 720 sf of living space is required.
- The driveway to the garage will have a 2' side setback where 5' is required.

Staff recommends approval of the request, noting that this is another infill project with existing infrastructure and City amenities.

He pointed out that the north side setback will be 1' from the overhang to the property line, but no variance is required for this because the rest of the properties in this block have overhangs that come up to the property line and the zoning ordinance has a provision allowing you to meet the block average. Staff encouraged the petitioner to center the home on the lot, but because building codes require firewalls for homes within 5' of the property line, they have decided to place the home within 1' of the property line so they will only need to provide a firewall for one side of the home. The builder has commented that they will not encroach onto the property to the north during construction.

One general inquiry was received from the public regarding this request with no comments in favor or opposition.

Petitioner Presentation:

Tonya Detweiler, 1630 Timberline Drive, spoke on behalf of the petitioner. She stated this is a small lot which comes with many challenges, but she feels they have solutions. She explained the house is being moved farther north on the lot because fire rated walls cannot contain windows and the owner would like to have windows on the south side of the home. She went on to say the house will not have a basement, so they feel they can do this construction without impacting neighboring properties.

Audience Comments:

Roland Weaver, 502 River Race Drive also spoke to the petition. He stated he supports this request and feels it will be a nice addition to the neighborhood.

The public hearing was closed.

Staff Discussion:

None

Action:

A motion was made and seconded, Rohn/Loewen, to adopt the Staff recommendations as the findings of the Board and based on these findings, approve 24-35DV with the 6 conditions listed in the Staff Report. The motion passed unanimously by a vote of 5-0.

VII. Audience Items

None

VIII. Staff/Board Items

- *Draft 2025 BZA calendar*

Mr. Deegan noted the 2025 BZA calendar is included in today's packets, asking Board members to update their calendars. No action is required from Board members.

IX. Adjournment: 5:33 pm Fisher/Rohn

Respectfully Submitted:

Lori Lipscomb, Recording Secretary

Approved By:

Tom Holtzinger, Chair

Hesston Lauver, Secretary