

MARCH 9, 2010

**BOARD OF ZONING APPEALS
CITY OF MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, March 9, 2010, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Jim Trippel, Ross Portolese, and Rosemary Klaer. Absent: Don McCampbell. Also in attendance: John Gourley, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

The minutes of the February 9, 2010, meeting, were approved as distributed.

Jim Trippel explained the Rules of Procedure.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #10-06 An appeal submitted by Troy Parmelee and Carrie Parmelee for the continuation of a Use Variance to permit a used car lot on property zoned C-7 Automobile Oriented Restaurant Commercial, located at **1110 South Ironwood Drive**.

Troy Parmelee, 32903 Nature View Drive, New Carlisle, said he is requesting a Use Variance for used car sales at 1110 S. Ironwood Drive. He said he originally received a Use Variance in 2006 for used car sales on the property, but it was limited to a time period of three years and he would like to extend the use for another three years.

Jim Trippel asked who runs the business. Mr. Parmelee said he owns the property and a friend leases it from him.

Charles Krueger asked if it has been the same person all along. Mr. Parmelee said he bought the property in 1997. He said there has been a coffee shop on the property, Jo-To-Go; the property was vacant for a few years during road construction on Ironwood, but the same person has leased it for the past 3 years. He said he has tried to sell the property and has been unable to and the current user is doing well at the site.

Rosemary Klaer asked Ken Prince if there have been any problems with the property. Mr. Prince said no, they have been a good tenant. He also said while it is not an ideal long-term use, it is an appropriate transitional use of the property.

Mr. Trippel closed the Public Hearing on Appeal #10-06.

Staff Recommendation

The Staff recommends approval of Appeal 10-06 to continue to operate a used car sales lot at 1110 S. Ironwood Drive limited to a time period not to exceed three years (February 2013), at which time it would be necessary for the property owner to file a request to continue the auto sales lot use. This recommendation is based upon the following findings of fact:

1. *Approval will not be injurious to the public health, safety, morals and general welfare of the community because all state and local building codes will be adhered to during construction;*
2. *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the historical use of the property had been a gas station. A variety of commercial businesses have been developed on Ironwood drive south of Ewing in both the City of Mishawaka and the City of South Bend;*
3. *The need for the variance arises from some condition peculiar to the property involved because the zoning allows for an auto related commercial use such as a drive-through/ drive-in restaurant, but prohibits a auto sales lot;*
4. *Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning for the property permits auto oriented drive through restaurants but exempts auto sales; and*
5. *The approval is consistent with the recommendations of the Comprehensive Plan for Commercial development at the northeast corner of the intersection of Ironwood Drive and Ewing.*

MOTION: Rosemary Klaer moved to forward Appeal #10-06 to the Common Council with a favorable recommendation. Ross Portolese seconded; motion carried with a vote of 4-0.

APPEAL #10-07 An appeal submitted by Al Fattah, LLC requesting a Use Variance for **715 East Mishawaka Avenue**, to allow for a drive-up window on property zoned C-1 General Commercial District.

Terry Lang, 715 S. Michigan St., South Bend, appeared on behalf of the Appellant. Mr. Lang said the property in question is the old Fashion Cleaners and the building in the back has been demolished. The Appellant wants a drive-up window and plans to close the entrance on the east side of the building so customers won't have to cross in front of vehicles exiting the drive-up window.

Mr. Lang said the Appellant agrees to comply with all staff recommendations.

Mr. Trippel asked if it was common to have a drive-up window at a convenience store. Mr. Lang said yes, Mr. Fresh on West Jefferson has had a drive-up window for years. It allows customers to pick up a few items without leaving the comfort of their vehicle.

Rosemary Klaer said it looked like there was a loose cigarette advertising sign. Is that allowed? Mr. Prince said it needed to be attached to the building.

Mr. Trippel closed the Public Hearing on Appeal #10-07.

Staff Recommendation

Staff recommends approval of Appeal 10-07 to allow a drive-thru convenience store located at 715 E. Mishawaka Avenue with the following conditions:

1. *A 10-ft pavement setback shall be established from the front property line along Mishawaka Avenue. This area shall be planted with shrubs and trees in accordance with the Landscape Ordinance.*

2. *A 5-ft pavement setback shall be established from the east, west, and south property lines.*
3. *Tree plantings in accordance with the Landscape Ordinance shall be adhered to.*
4. *An opaque fence shall be installed adjacent to any residentially zoned property.*
5. *The dumpster shall be enclosed in a structure of architectural block consistent with the building.*
6. *The ice machine shall be moved inside the building.*
7. *Required improvements shall be completed before the occupancy of the drive-thru.*

This recommendation is based upon the following findings of fact:

1. *Approval will not be injurious to the public health, safety, morals and general welfare of the community because all state and local building codes will be adhered to during construction;*
2. *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the historical use of the property had been dry cleaning business and the existing C-1 General Commercial will remain; furthermore, the site will be brought up into compliance with current developmental requirements.*
3. *The need for the variance arises from some condition peculiar to the property involved because the zoning current zoning allows for a convenience store, but prohibits a drive-thru use;*
4. *Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning for the property permits a convenience store but does not allow a drive-thru to be incorporated into the business; and*
5. *The approval is consistent with the recommendations of the Comprehensive Plan for General Commercial development.*

MOTION: Ross Portolese moved to forward Appeal 10-07 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:17 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner