

JANUARY 11, 2011

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, January 11, 2011, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Jim Trippel, Don McCampbell, and Rosemary Klaer. Absent: Ross Portolese. In addition to members of the public, the following were also in attendance: Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

Don McCampbell turned the meeting over to Ken Prince for the election of officers.

ELECTION OF OFFICERS:

MOTION: Jim Trippel moved to nominate Don McCampbell as Chairman. Rosemary Klaer seconded; motion carried with a vote of 3-0.

MOTION: Chuck Krueger moved to nominate Jim Trippel as Vice-Chairman. Rosemary Klaer seconded; motion carried with a vote of 3-0.

MOTION: Rosemary Klaer moved to adopt the 2011 Rules of Procedure. Jim Trippel seconded; motion carried with a vote of 4-0.

Don McCampbell explained the Rules of Procedure.

The Minutes of the December 14, 2010, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #10-44 An appeal submitted by Mohamed Zackria requesting a Use Variance for **715 East Mishawaka Avenue**, to permit U-Haul rental on property zoned C-1 General Commercial District. *Continued from December 14, 2010 meeting.*

Mohamed Zackria, owner of Sofi Mini-Mart, 715 E. Mishawaka, presented his request.

Mr. Zackria said by providing U-Haul rentals he is helping his customers and the community.

Jim Trippel asked how many of these vehicles will be stored on his property. Mr. Zackria said maybe three, no more.

Charles Krueger asked Mr. Zackria if he was aware of the conditions of approval outlined by staff. He said yes he was.

Mr. McCampbell asked if he was in accordance with all eight items. Mr. Zackria said yes.

In Favor

Crystal Rans, 507 E. Mishawaka Ave., said she has lived in this residence almost eight years. She said this store has become more of a mom and pop type of store. They are their friends now. Ms. Rans said they didn't have anything like this in their neighborhood. She said the 7-11 is a commercial company that is over-priced and has no customer appeal at all and at Sofi they know their names and she knows their names. She also said a cousin of hers needed a U-Haul trailer on short notice and Mr. Zackria was able to provide one for them.

Don Kiiskila, 1540 Southwood, Mishawaka, said he has known Mr. Zackria for about six years when he had the station on Byrkit and 12th Street. He said he is a good addition to the community. Mr. Kiiskila said Mr. Zackria has applied for U.S. Citizenship and he cares about being here and about people.

Mr. Kiiskila said Mr. Zackria has done everything to get the proper permits and he hasn't snuck anything by.

Leon Welch, 1909 Beech Street, Valparaiso, IN, said he is the Area Field Manager for U-Haul. He said speaking for U-Haul he will make sure that Mr. Zackria adheres to whatever conditions you place upon his dealership.

Mr. Welch asked the Board if they would also allow a certain time in case one extra piece might end up on his lot that they be allowed at least a 48 hour time period to make sure they can properly move the vehicle off the property. He said sometimes it happens.

Mr. McCampbell closed the Public Hearing on Appeal #10-44.

Staff Recommendation

Staff recommends approval of Appeal #10-44 to allow a moving rental use at 715 E. Mishawaka Avenue with the following conditions:

- 1. The total number of vehicles stored on the property at any one time shall be limited to three (3). This includes trucks, vans, pick-ups, trailers, etc.*
- 2. Truck size shall be no larger than a standard 26' moving truck.*
- 3. All trucks, vans, pick-ups, trailers, etc., shall be parked and stored behind the main building on a paved surface. Crushed gravel shall not be permitted. Curbing or wheel-stops shall be utilized in order to prevent encroachment of vehicles into lawn area.*
- 4. No outside storage or display of moving items, such as dollies, shall be permitted.*
- 5. All pavement setbacks for new pavement shall be adhered to. A 10' pavement setback along Mishawaka Avenue shall be required. This area shall be landscaped with plantings in accordance with the Commercial Landscape Ordinance.*
- 6. The front, rear, and side yards shall be planted with trees in accordance with the Commercial Landscape Ordinance.*
- 7. A minimum 6' privacy fence shall be installed along the entire west property line adjacent to the existing residential properties.*
- 8. The dumpster shall be enclosed in a structure consistent with the architectural material of the primary building.*

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 existing C-1 General Commercial zoning will remain; furthermore, the site will be brought up into compliance with current developmental requirements and stormwater management measures will be implemented. All moving vehicles will be located and stored behind the main building.*
3. *The need for the variance arises from some condition peculiar to the property involved because the current zoning allows for a convenience store, but prohibits moving truck rentals;*
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 moving truck rental to be incorporated into the business; and*
5. *The approval is consistent with the recommendations of the Comprehensive Plan for General Commercial development.*

MOTION: Charles Krueger moved to forward Appeal #10-44 to the Common Council with a favorable recommendation subject to the outlined conditions of approval. Jim Trippel seconded; motion carried with a vote of 4-0.

APPEAL #11-01 An appeal submitted by University Commons Medical Plaza LLC requesting various Developmental Variances in the **6300 Block of SR 23 (University Commons Shopping Center), South Bend**, to permit a reduction of required parking spaces, reduction in parking setback, reduction in landscaping, reduction in building setback, and waive the requirement of 7' opaque fence along perimeter of site.

Mike Danch, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, represented the Appellants. Mr. Danch said the University Commons Shopping Center is being renovated into a medical plaza. He said there is an existing doctor's office at the site and also a Taco Bell on the property that will remain, but the rest of the buildings will be renovated and redone.

Mr. Danch said because there is a change of use for the property, staff indicated the site would be to be brought into compliance with current commercial standards. He said there is no need for the same amount of parking as before and just under an acre of asphalt will be removed and redone with landscaping. They're trying to make the site look a lot better than it has in the last 30 years. The angled parking spaces along the front portion of the site will be removed and replaced with landscaping.

Mr. Danch said the State has gone through and improved SR 23 and what that's done is made the existing parking non-compliant and the parking variance will allow them to leave the parking as is. Mr. Danch said a portion of the parking actually encroaches into the SR 23 right of way and has not caused any problem.

Mr. Danch said they are also requesting a building setback variance for structures. He said if you have been to the site there were a number of trash dumpsters for the retail uses and that will be cleaned up and they have selected a couple of spots on the property to relocate the dumpsters. They will be enclosed and screened from the public and the right of ways.

Mr. Danch said regarding landscaping, they are unable to provide the required landscaping along SR 23 because the parking encroaches into the road right of way. He said he contacted the State Highway Department to determine if they will permit landscaping in the area, but has not received a response.

Mr. Danch said along the rest of the perimeter they are putting in trees and landscaping. He said the ordinance requires a 7' opaque fence due to its being adjacent to a residential area, but he doesn't think it makes sense. Also since the property will no longer be retail, there won't be delivery trucks going in and out of the site. Mr. Danch said they will instead add landscaping along Hickory and Clovis Roads.

In Opposition

Sharon Turner, owner of 53445 Hickory Road, South Bend, said she liked what Mr. Danch had to say. She also said when the shopping center was developed, they had grand plans too, but they never materialized. She's wanted the dumpsters enclosed for 40 years; trash blows on her property and looks terrible. Ms. Turner said they put in sparse landscaping around the perimeter and it died. She's hoping for something nice to go on that property because she's hoping to sell her property some day.

Ms. Turner asked if there would be signs on the rear of the buildings. She said she hoped not. When Associates was a tenant they were initially told they wouldn't have signs on the rear of the building, but she said businessmen don't always keep their promises and signs were put on the back of the building. Ms. Turner said it's very annoying to have a big picture window and have a big red, white, and blue sign shining into your home.

Rebuttal

Mr. Danch said he is not aware of any plans for signs on the rear of the building.

Ken Prince said the ordinance does permit signage on the rear of the building, however, he hasn't seen medical buildings such as this put that type of signs on the rear of buildings unless they face a roadway.

Mr. McCampbell closed the Public Hearing on Appeal #11-01.

Staff Recommendation

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because all construction will be completed in accordance with all applicable state and local building codes;*
- 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 proposed site improvements represents an investment in the neighborhood; the pavement setback will not encroach any further than its current setback; a medical office use requires less parking than a shopping center use; and screening measures such as dumpster enclosures and new landscaping will be implemented where none currently exist.*
- 3. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the pavement setbacks and buildings are existing. The existing location and configuration of the current buildings will not allow for required*

pavement, dumpster setbacks, and parking spaces to be adhered to while still maintaining an efficient way of maneuvering vehicles throughout the property.

MOTION: Charles Krueger moved to approve Appeal #11-01. Jim Trippel seconded; motion carried with a vote of 4-0.

APPEAL #11-02 An appeal submitted by Simon Addicott requesting a Developmental Variance for **536 Miami Club Court**, to allow a 28' tall, 1,248 square foot garage.

Nick Miller, Nick's Custom Built Homes, appeared on behalf of the Appellant. He said there is one change in the request. He said the garage will not be 28' tall, but only 18'. There was an error in the appeal. Mr. Miller said Mr. Addicott wants to build a house that matches the house. It will be brick to match the main house with a synthetic slate roof also to match.

Mr. McCampbell asked if the garage will be for four cars, four doors. Mr. Miller said yes, two on the side that face the street, and two will face the house.

Mr. McCampbell closed the Public Hearing on Appeal #11-02.

Staff Recommendation

*The Staff recommends **approval** of Appeal #11-02 to construct a 28' tall, 1,248 sqft detached garage. 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 property owner has gone to great length to match the architectural style of the historic home and the garage represents a significant investment in the neighborhood; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property as the current ordinance governing the size of accessory structures does not make provision for the construction of specific style structures, particularly in older neighborhoods with homes of architectural significance as is the case with this property. Strict application would prevent the Appellant from constructing a garage that matches the aesthetic character of the home and allow for sufficient space for storage of vehicles and equipment.*

MOTION: Rosemary Klaer moved to approve Appeal #11-02. Jim Trippel seconded; motion carried with a vote of 4-0.

APPEAL #11-03 An appeal submitted by Bendan Properties requesting a Sign Variance at **5809 Grape Road**, to allow a 60' high off-premise sign.

Terry O'Brien, Burkhart Advertising, 1335 Mishawaka Ave., South Bend, presented the appeal. Mr. O'Brien said Burkhart Advertising has been in business in the South Bend Area since 1960. He said if you drive around the greater Mishawaka/South Bend area you will see signs that vary in height from 15' to 70'. He said when they determine the height they would like to have for a sign, it is consistent with signage that exists in the area. Mr. O'Brien indicated that signs

along Grape Road are in excess of 35' and said that Burkhart doesn't feel this would be a negative. He said if there were no signs around or only monument signs in the area, then a 60', 50', 40', even 35' tall sign would stick out like a sore thumb. They don't feel this would be a negative to the business climate in the area because it would be consistent with other signage.

Mr. O'Brien said in Mr. Prince's analysis, he indicated the sign could be a negative to the University Park Apartment complex because of the possibility of erecting a digital sign. He said the market will determine when and if a digital sign goes there. The first digital sign in Mishawaka was installed further south on Grape Road approximately six months ago and five out of the seven advertisers sold. He said they wouldn't be spending the money to put up a digital sign until that sign is sold out and there is demand from other advertisers. Mr. O'Brien said he can't honestly say a digital sign would be installed there sometime in the near future.

Mr. O'Brien said Mr. Prince's analysis indicated the University Park Apartments were approximately 400' away from the sign site. Mr. O'Brien said the sign would be configured to drivers along Grape Road. The apartments are approximately 150' off of the road behind Fox Jewelers.

Opposition

James Masters, Nemeth, Feeney, Masters & Campiti, 211 W. Washington St., South Bend, appeared on behalf of Schottenstein Property Group who owns Crossings Mall which is adjacent to the site in question. This is the shopping center where Value City Furniture and Christmas Tree Shoppes are located. Mr. Masters said the planning staff has capably analyzed the variance request and pointed out the reasons why it should be denied.

Mr. Masters said it is a fundamental principle of zoning law that a variance must be based on a hardship, but a hardship cannot be self created. In this case, the Petitioner has created its own hardship. They own the property on which the Burger King is located and they tell you in the appeal that the total height of 60' was selected so it would not affect the viewing of the Burger King on-premise sign. In other words, the Petitioner tells you it wants a variance for a 60' tall sign so its own on-premise sign will not be affected. Mr. Masters said the Petitioner cannot create its own hardship and then request a variance. He also said they could remove the Burger King sign and erect a 30' tall sign and be in compliance with the zoning code and not need a variance.

Mr. Masters said the use and value of the adjacent properties cannot be adversely affected by the granting of a variance. He said the Petitioner does not want to adversely affect the viewing of its own on-premise sign, but the requested variance would adversely affect the use and value of his client's property. Mr. Masters also said the size of the sign, 14' X 48', is twice the size of a normal sign because it is a replacement sign and will block the view of the Crossings Shopping Center sign from Grape Road and surrounding properties. He said the property owner believes the proposed 60' tall sign will adversely affect his property by blocking the view of the property and hinder its ability to attract additional tenants to the site. The current tenants will have their use of the property adversely affected by blocking the view of their businesses from Grape Road. Mr. Masters said for these reasons, the variance should be denied.

Rebuttal

Mr. O'Brien said the sign that Mr. Masters referred to received a variance in the 80's for height. He said if the Board feels his request is unreasonable asking for 60', perhaps the Board would grant 45' or 50' and minimize the effect to Mr. Master's client's signage, he would not be opposed to that. He said code does permit a 35' tall sign and there's the possibility that if this request is not granted, a 35' tall sign could still go up.

Mr. McCampbell closed the Public Hearing on Appeal #11-03.

Mr. Trippel asked about the height of the sign on Grape Road referred to earlier. Mr. Prince said the height of that sign is 45'.

Mr. O'Brien said staff provided information that the variance for the height of the Factory Outlet sign that could potentially be blocked by this sign was originally requested was for 80', but the Plan Commission denied that height and approved 60'.

Mr. Masters said he knows it is not protocol to speak after the public hearing has been closed or approach and start handing the Board more evidence, but he asked to be able to speak again. Mr. McCampbell allowed Mr. Masters to speak as Mr. O'Brien was allowed to do so. Mr. Masters said the variance granted to his client 20 years ago was under at least two prior ordinances and not under the current ordinance and that is a big factor here.

Mr. Trippel asked how tall the sign could be. Mr. Prince said 35'. They could have the exact same sign, but it has to be 35' and not 60' and the size is immaterial.

Staff Recommendation

*The Staff recommends **denial** of Appeal 11-03 to allow for a developmental variance to allow for the construction of a 60' high off-premise sign. By ordinance, off premise sign height is limited to 35'. The recommendation is based upon the following Finding of Facts:*

- 1. The approval has the potential to be injurious to the public health, safety, morals, and general welfare of the community because of the close proximity of a residential use and the increased visibility to the sign provided by the additional height.*
- 2. The use and value of the area adjacent to the property included in the variance has the potential to be affected in an adverse manner because the potential impact to residential properties and the has the potential to negatively impact the investments made by other commercial businesses in signage based on the understanding of the requirements of the ordinance.*
- 3. The strict application of the terms of this chapter will not result in practical difficulties in the use of the property because the specific merits of a properties location and context are similar to other commercial areas where off-premise signs are permitted. In this case, any hardship is self created and could be addressed by other means in compliance with the ordinance.*

MOTION: Jim Trippel moved to deny Appeal #11-03. Rosemary Klaer seconded; motion carried with a vote of 4-0.

APPEAL #11-04 An appeal submitted by Imad Elayan, Laurence D. Jones, and Dorothy L. Jones requesting a Developmental Variance at **2213 Lincolnway West**, to permit a building addition with a 0' rear building setback.

Imad Elayan said he would like to add 20' X 20' on to the existing gas station building. He said no one can supply a small gas station anymore.

Mr. Trippel asked if there was anything between the rear of this property and the railroad tracks. Mr. Elayan said no.

Mr. McCampbell closed the Public Hearing on Appeal #11-04.

Staff Recommendation

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community because all construction will be completed in accordance with all applicable state and local building codes;*
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 construction represents an investment in the neighborhood; and appropriate stormwater management measures will be implemented to prevent water run-off onto adjacent property; and the property addition will not encroach any further into the rear-yard setback than the existing building.*
3. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the existing building was built up to the rear-yard property line. The existing building could not be expanded and improved without encroaching into the rear-yard setback.*

MOTION: Rosemary Klaer moved to approve Appeal #11-04. Jim Trippel seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:38 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner