

MARCH 8, 2011

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, March 8, 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 Ross Portolese. Absent: Rosemary Klaer. In addition to members of the public, the following were also in attendance: Ken Prince, Peg Strantz, Greg Shearon, Kari Myers, and Joe Dits of the South Bend Tribune.

Don McCampbell explained the Rules of Procedure.

The Minutes of the February 8, 2011, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #11-06 An appeal submitted by Habitat for Humanity of St. Joseph County requesting a Developmental Variance for **616 East Battell Street** to allow a new home with a 23' 6" front building setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said this lot is owned by Habitat, but was previously owned by the City. He also said that NSP funds were used to purchase blighted properties and demolish the homes on the lot.

Mr. Prince said in each case we've tried to line up the front of the house to put the home in context to that of the neighborhood. This home will be a traditional four-square design and it blends in well with the older architecture of the neighborhood.

Charles Krueger asked what the 10' X 12' dimension was shown on the overhead. Mr. Prince said it was a concrete patio adjacent to the walkway.

Don McCampbell closed the Public Hearing on Appeal #11-06.

Staff Recommendation

Staff recommends approval of Appeal 11-06 to allow the construction of a home lot with a 23.5-foot front-yard building setback. 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 proposed home will be consistent with the existing front-yard building setbacks of the adjacent homes.*

3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25-foot building setback would push the home further back into the lot, thus reducing that amount of usable yard area; furthermore, the required 25-ft front-yard building setback would not be consistent with adjacent residential front-yard building setbacks.*

MOTION: Charles Krueger moved to approve Appeal #11-06. Jim Trippel seconded; motion carried with a vote of 4-0.

APPEAL #11-07 An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **548 West Sixth Street** to allow a new home with a 10' front building setback.

Ken Prince, City Planner, represented the Redevelopment Commission. He said this would be the same design of home as the previous appeal.

Mr. Prince said the structures on these lots were demolished by the Redevelopment Commission and the intent is to build 2 new single family homes on the lots. He indicated that at one time there were up to 20 apartments on these lots and the area was the root of a lot of crime. Mr. Prince also said that these properties are on tonight's Plan Commission agenda for rezoning.

Mr. McCampbell closed the Public Hearing on Appeal #11-07.

Staff Recommendation

Staff recommends approval of Appeal 11-07 to allow the construction of a home lot with a 10-foot front-yard building setback. 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 proposed home will be consistent with the existing front-yard building setbacks of the adjacent homes.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25-foot building setback would push the home further back into the lot, thus reducing that amount of usable yard area; furthermore, the required 25-ft front-yard building setback would not be consistent with adjacent residential front-yard building setbacks.*

MOTION: Ross Portolese moved to approve Appeal #11-07. Jim Trippel seconded; motion carried with a vote of 4-0.

APPEAL #11-08 An appeal submitted by City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **715 East Sixth Street** to allow a new home with a 12' front building setback and a 2' 6" side yard setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said this request is nearly identical to the previous two requests and they are also requesting a side setback for a small porch and not the wall of the house itself.

Mr. McCampbell closed the Public Hearing on Appeal #11-08.

Staff Recommendation

Staff recommends approval of Appeal 11-08 to allow the construction of a home lot with a 12-foot front-yard building setback and a 2.5-ft setback along the west property line. 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 proposed home will be consistent with the existing front-yard building setbacks of the adjacent homes. Furthermore, the house adjacent to west is approximately 7-ft from the property line.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25-foot building setback would push the home further back into the lot, thus reducing that amount of usable yard area; furthermore, the required 25-ft front-yard building setback would not be consistent with adjacent residential front-yard building setbacks.*

MOTION: Jim Trippel moved to approve Appeal #11-08. Ross Portolese seconded; motion carried with a vote of 4-0.

APPEAL #11-09 An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **116 East Seventh Street** to allow a new home with an 8' front building setback and 2' 6" side yard setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said this request is almost identical to the previous request and also requesting the side setback for porch. He said the 8' front setback will keep the house in-line with neighboring houses.

Mr. McCampbell closed the Public Hearing on Appeal #11-09.

Staff Recommendation

Staff recommends approval of Appeal 11-09 to allow the construction of a home lot with an 8-foot front-yard building setback and a 2.5-ft setback along the west and east property lines. 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 proposed home will be consistent with the existing front-yard building setbacks of the adjacent homes. Furthermore, the house adjacent to west is approximately 8-9 feet from the property*

line. Furthermore, only a small porch will encroach into the side-yard setback along the east lot line. The remainder of the house will comply with the 5-ft minimum setback along the west lot line.

- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25-foot building setback would push the home further back into the lot, thus reducing that amount of usable yard area; furthermore, the required 25-ft front-yard building setback would not be consistent with adjacent residential front-yard building setbacks.*

MOTION: Charles Krueger moved to approve Appeal #11-09. Ross Portolese seconded; motion carried with a vote of 4-0.

APPEAL #11-10 An appeal submitted by Jeffrey M. and Melanie L. Hungerford requesting a Developmental Variance for **605 Bay View Drive** to allow a privacy fence with a 10' and 13' setback on a corner thru-lot.

Jeffrey Hungerford, 605 Bay View Drive, presented the request. He said there is a lot of traffic to the apartments located behind them and the privacy fence would block those lights from shining into their house.

Mr. Hungerford said the fence would be located on the inside of the trees along Vistula and along the back of the property along Ventura, outside of the trees. He said they decided to keep the fence inside the trees along Vistula so it would allow better visibility for people entering and exiting the neighborhood.

Mr. Portolese asked if the fence would be around the house. Mr. Hungerford said no, only along the back side of the property and then go up to the back side of the garage. It will not extend all the way to Bay View (the revised drawing showing the proposed location of the fence was shown on the overhead). Mr. Prince said the orange stakes shown in the photo gives an indication of where the fence will be located. He also said this fence will be set farther back than the neighbor's fence.

Jim Trippel asked how tall the fence would be. Mr. Hungerford said 7'.

Mr. Hungerford said when they bought the property there were bushes all along the back side removed those and have improved the visibility.

Mr. Krueger asked if the fence would be wood or vinyl. Mr. Hungerford said vinyl and tan or beige to match the house.

Ken Prince read a letter of support from Michael and Darlene Salyer, 606 Bay View Drive.

Mr. McCampbell closed the Public Hearing on Appeal #11-10.

Staff Recommendation

Staff recommends **approval** of Appeal 11-10 to allow the construction of a privacy fence with a 20' exterior side yard setback along Vistula and a 10' rear yard setback along Ventura Drive. 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 and the fence will be installed to create proper vision clearance at the intersection of Vistula and Ventura;

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 fence will be set well inside their yard and not create visibility issues; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25-foot building setback from both Vistula Drive and Venture would reduce the amount of usable yard area.*

MOTION: Ross Portolese moved to approve Appeal #11-10. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #11-11 An appeal submitted by Communitywide Federal Credit Union requesting a Sign Variance for **3530 Hickory Road** to allow an electronic message center that exceeds copy and display area. *Appellant requests withdrawal*

Mr. McCampbell read a request from the Appellant requesting withdrawal. The Board unanimously approved the request.

APPEAL #11-12 An appeal submitted by Communitywide Federal Credit Union requesting a Sign Variance for **4625 Lincolnway East** to allow an electronic message center that exceeds copy and display area.

Tim Overmyer, Vanadco Signs, 10625 State Road 10, Argos, IN, appeared on behalf of the Appellant, Communitywide Federal Credit Union. He said Communitywide is requesting to add an electronic message center to its existing sign.

Mr. Overmyer said about a year and a half ago Communitywide reviewed their marketing plan and decided to add message centers to all of their branches. They've been added in Granger, South Bend, Elkhart, and Goshen to name a few. Their marketing is directed toward local traffic and they feel the best way they can do this is to put a sign on their branch.

Mr. Overmyer said the area has other large signs around and he feels this will not be obtrusive to the area being that CVS and Walgreens has this type of sign.

Mr. Overmyer also said he works all over the state and says it has been a pleasure to work with Mishawaka; they really try to help.

Mr. Trippel said the signs that are adjacent to this property are all within the sign ordinance. Mr. Overmyer said yes and they have larger lots than Communitywide. He said if they had originally known they would do this, they would have put up a smaller sign when it was originally installed and doesn't feel like this request is asking for a lot. He also said he knows a hardship cannot be financial, but they feel like it would be a lot of money to change the sign.

Mr. McCampbell closed the Public Hearing on Appeal #11-12.

Mr. Trippel asked Mr. Prince what was the reasoning behind the staff recommending denial. Mr. Prince said staff did not feel there was a hardship for the request. He said as Mr.

Overmyer indicated it was financial. They have the ability to modify the existing sign and bring it in to within code, but they prefer not to do that.

Mr. Prince also said it's about precedent from Staff's perspective. You can imagine that every retailer would rather add a message board instead of complying with sign regulations as they exist. Staff feels it would set a poor precedent, particularly on how much we struggle with signs.

Staff Recommendation

*The Staff recommends **denial** of Appeal #11-12 to allow for the addition of an electronic message board to the existing freestanding sign. This recommendation is based on the following Findings of Facts:*

- 1. The approval may be injurious to the public health, safety, morals and general welfare of the community because The On-Premise Sign Standards were established to reduce excessive signage and sign clutter by limiting height, size and number of signs. This appeal is in direct contradiction of that intent;*
- 2. Use and value of the area adjacent to the property included in the variance could be affected in a substantially adverse manner because the sign will be designed and constructed with no thought or regard to the On-Premise Sign Standards adopted for the City of Mishawaka; and*
- 3. The strict application of the terms of this chapter will not result in practical difficulties in the use of the property because the location and context are similar to other businesses in the area who have complied with the On-Premise Sign Standards Ordinance and any hardship is self created and could be addressed by other means.*

MOTION: Ross Portolese moved to *deny* Appeal #11-12. Jim Trippel seconded; motion carried with a vote of 4-0.

APPEAL #11-13

An appeal submitted by Gates Automotive Group on behalf of University Park Mall LLC requesting a Use Variance for **6501 Grape Road** to permit three (3) separate off-site Used Car Sales as follows: ten (10) days in May, ten (10) days in June, and ten (10) days in August with temporary signage including banners and cold air balloons, and a mobile office facility for business transactions and securing of valuables.

Clint Emberton, General Sales Manager of Gates Automotive Group, 636 W. McKinley Ave., Mishawaka, presented the appeal. He said they wish to use the parking lot north of JC Penney with the west bordering SR 23 and the east to Grape Road. Mr. Emberton said that Simon Properties has given their permission for this event. Both Irene McKernan, Director of Mall Marketing and Business Development and Steve Kemp, General Manager are available for questions.

Mr. Emberton said a similar request was granted for two dates in 2010, Gates realizes they must satisfy five specific findings of fact for this request to be granted. He said he also has a copy of the letter of remonstrance submitted by some, but not all Mishawaka auto dealerships.

Mr. Emberton addressed all five findings of fact. They are as follows:

1. Will approval be injurious to public health? Mr. Emberton said staff indicated there were no problems or issues after last year's event, other than concerns from competing

dealers. He said their activities and actions bring no harm to future investments in the City or that would bring harm to property valuation in general. Businesses will thrive where the general public feels welcome. Mr. Emberton said the objectors also concede to this fact.

2. Will the use and value of adjacent properties be affected in an adverse manner? Mr. Emberton provided the definition of "adjacent" from the Oxford Dictionary. Mr. Emberton said not one business represented by the objector's petition is adjacent to the property requiring the variance. In fact, none of the objectors or businesses they represent is within the required 300' notification geographic area.

Mr. Emberton said furthermore, the arguments made by the objectors lose credibility when suggesting Gates just came to town, put up a tent, and for a few thousand dollars began selling cars in the premium location. He said Gates has been in the same location in Mishawaka since 1933. They are not a transient operation; we did not just come into town, 1933 this is longer than any of the objectors and longer than most combined.

Mr. Emberton continued by saying in 2010 Gates spent another one million dollars to renovate the existing Mishawaka campus. It's been at the same location on McKinley in Mishawaka since 1961, 50 years. He said this qualifies as a permanent location located in the City of Mishawaka on a full-time basis.

Mr. Emberton said University Park Mall and Gates Automotive have a mutually beneficial business relationship. He said Gates and University Park Mall are simply trying to do their part to infuse Mishawaka's economy. The dollars they spend maintaining a display at center court and holding events they stage outdoors really is their business and he can assure everyone that it is slightly more than a few thousand dollars as suggested in their petition. (Mr. Emberton named some of the businesses located within the 300' as read from his prepared statement).

3. Does the need for the variance arise from some condition peculiar to the property involved? Yes. Mr. Emberton said according to the objector's petition there is nothing peculiar about University Park Mall or the zoning of the property. If in fact, this were the case, we could all go home and it would be a non-issue. The mall property is zoned C-2, Shopping Center Commercial, and the mall has the ability to display vehicles inside the mall and Gates has an active display currently inside the mall. Mr. Emberton said they cannot sell cars inside the mall without a variance as the C-2 zoning does not permit vehicle sales. Per the Planning staff report, C-2 does not permit vehicle sales even on a limited basis, thus requiring the Use Variance.

Mr. Emberton said the mall will continue to find sources of additional revenue if the variance is not approved. Failure to allow this event will be counterproductive to the business plan of a retail attraction such as University Park Mall.

4. Does the strict application of the ordinance constitute an unnecessary hardship? Yes. Mr. Emberton said the request is for the mall property, not for Gates. He said he appreciates the fact that the objector's petition recognizes they operate a state-of-the-art Toyota facility in South Bend and a used car operation in downtown South Bend. However, the variance request is for none of those locations. Mr. Emberton said perhaps no one can recall past off-site sales events that have been staged, successfully he might add, in the City of Mishawaka (he cited several locations in the area where previous events have been held). He said he believes the holding of the sales events on those locations did nothing to decrease the value of these properties. To the

contrary, these events may have had a hand in convincing someone that these were great retail locations. Consequently, commerce grew and revenue flowed into the City of Mishawaka. Mr. Emberton said the ironic part of this exercise is that all of the objectors at one time or another has participated in these types of events. He indicated that Simon Properties have no other means to generate revenue other than space and real estate leasing. Staff finds that UP Mall has been inherently constructed to handle this type of event by having the appropriate access, lighting and parking, and security provided by the mall for just such an event. Mr. Emberton said let the mall be the regional draw that it was designed to be. In 2010, over 25% of their sales generated from these events were from outside the state of Indiana. Regional draw... I think so and it's a windfall for Mishawaka not a hardship.

4. Will approval interfere with the Mishawaka 2000 Comprehensive Plan? Mr. Emberton said No, it will not. They have complied with the strict guidelines for layout, setbacks, trash, parking, safety, and signage.

Mr. Emberton said the local and surrounding communities have grown accustomed to and anticipate the off-site events they promote. Gates, in conjunction with the generous consideration of the City of Mishawaka have been part of many creating exciting safe and mutually beneficial off-site sales events. These events, although labor intensive, allow Gates to have a positive impact on our automobile buying public, both locally and regionally. He said Gates employees and their families, surrounding businesses, and the Mishawaka economy benefit from these events. Mr. Emberton said in 2007 Gates was given a choice to select a single point location for their Chevrolet franchise, South Bend or Mishawaka, and they chose Mishawaka because of the foresight and business acumen of City leaders. He continued by saying there were other sites in the city that could be used if this request is not approved. They believe good business stewardship requires they help stimulate the economy where they and their employees work, live, and spend their money.

Mr. Emberton said Gates has committed hundreds of thousands of dollars to the future events that are still in planning stages for the City of Mishawaka. He said there are no guarantees of success with any venture, but there are especially no guarantees to the success where the competition has been notified months in advance of our plan and Gates is not asking the city to guarantee their success.

Mr. Emberton said Gates Automotive just want to be part of a vibrant and energetic City and asked the Board not to discourage their efforts, but rather fan the flame of momentum by granting their request.

Mr. Trippel asked if they enter into a lease agreement with the mall. Mr. Emberton said yes.

FAVOR

Matt Helmkamp, Gates Chevy World, Mishawaka, thanked the Board for hearing their appeal. He said they didn't want to miss their chance to have this sale by a few words and they've done their best to lay out their case and arguments.

Mr. Helmkamp said they have been doing this sale in some fashion for almost 30 years in different parts of Mishawaka and South Bend. He said they always have a speech for employees on Monday morning, the first day of the sale. Mr. Helmkamp says he remembers his father-in-law giving it and now he gives it, or Joel Gates, or Clint gives it and it goes something like this: "Everything that we do will reflect on our business here, so we need to make sure we are driving safely off the parking lot; we need to make sure we're picking up trash and not leaving bottles around; we need to make sure if we use the restrooms at

Penney's that we leave them cleaner than we found them." Mr. Helmkamp said they do these things because they know that whatever they do affects our reputation as a business in Mishawaka. He said they would not want to do anything that harms that reputation or harms their future business. They desire to do things that will increase their standing in the community and they have found their customers love these sales. Mr. Helmkamp invited all to attend the events. He said you will be greeted by a sales person in a professional manner, you'll hear the music and enjoy the atmosphere and maybe even buy a car.

Mr. Helmkamp said you won't find anything adverse to the City and they have the sales for their customers and when he talks with their customers they tell him they got their car from one of the off-site sales. He said they are excited about it because they think they got a better deal.

Mr. Helmkamp continued by saying this is a good thing for Mishawaka; it's a good thing for the Gates organization; it's a good thing for the mall and we know that it brings business to the mall. It's truly a regional event. Some of the customers will come down in the morning, visit with a salesperson and look at a car. They may or may not decide to buy a car, but may spend time at a restaurant or in the mall. They may even go to a competitor and buy a car there instead. Mr. Helmkamp feels this is not adverse to the City. It's good business and it promotes business.

Mr. McCampbell said Mr. Emberton mentioned you could not sell cars inside of the mall. So the display outside of Macy's is strictly a display. Mr. Helmkamp said that is correct; there are no sales people at the mall.

Steve Kemp, General Manager at University Park Mall, said they have a great working relationship with Gates. He said these types of events bring traffic to the shopping center and that's part of what he's supposed to do; drive traffic to the center. Mr. Kemp said they see the benefit of the auto sales and the traffic that comes through the mall; an increase in business for the stores and restaurants. He said it's a mutually beneficial relationship.

OPPOSITION

Mike Leep, Jr., Vice President Sales at Gurley Leep Automotive, said he has several dealerships in Mishawaka and also the surrounding area. He said they have great respect for the Gates family and everything they've done in the community has no doubt they put on a great event.

Mr. Leep said the dealerships that signed the letter of remonstrance (Basney Honda, Gurley Leep Automotive, Jordan Automotive, and Lexus of Mishawaka) have invested millions of dollars in land, facilities, and employees and it's a huge investment to conduct business in the City of Mishawaka and enjoy the locations that we enjoy today. Mr. Leep said they pay those expenses month in and month out to do business in the City and there are many months in the year where they operate at a loss knowing that there are seasonal times and the summer selling season is the busiest time of year for them. He said for another company to come in and go around the permanent zoning laws that are in place to take advantage of that selling season really puts a financial hardship on his company. Most importantly, setting a precedent that anyone with an Indiana Dealer's License can come in and get a variance, such as Enterprise Rental Car, and wanted to bring 300 rental cars from Indianapolis that they needed to get rid of and come out and have a sale at the mall and dispose of them and leave town, that sets a dangerous precedent.

Mr. Leep said there is nothing peculiar about the property. The mall has been zoned the same way for 30 years to do business as an indoor shopping center, to rent space to businesses. The mall has the ability to gain revenue for renting indoor space to car dealers, just as we have done in the past as well.

Mr. Leep said there is no hardship. The mall has had a successful business model for 30 years, whether or not this sale happens, it's going to continue on as a successful mall. He said that whether or not they have this sale at the mall, Gates is going to continue to do business. They made a great investment on McKinley in their facility providing a great atmosphere to sell cars; it doesn't matter if it's there or at the mall, they can create a carnival-like atmosphere wherever they want. Mr. Leep said if they want to do it at an off-site location, they can and they've had success at other locations that didn't require a variance to do so.

Mr. Leep said they had no challenge as to the Mishawaka 2000 Comprehensive Plan; the City felt it didn't meet that point.

Mr. Leep said only one Finding of Fact needs to be on the opposing end and they feel they have three solid facts that this is something that shouldn't go forward. He again indicated he felt it was setting a dangerous precedent. He said they are thankful for the opportunity to be able to present their case; last year they were surprised by the sale.

Mr. Leep said the car sales business is a challenging business to run and there are certain overhead costs that they need to meet year round to be successful in running the businesses. Last year Gurley Leep paid \$758,000 in Mishawaka real estate and county payroll tax; \$322,000 in water and electric bills. He said on top of that, they pay rent to rent their buildings and if you add up all their rent factors, that's another \$2.8 million dollars. Mr. Leep said they spent almost \$4 million dollars a year to do business on Grape Road and to have someone come in and spend a fraction of what they are spending and not have a permanent investment, it's just not right.

Mr. Leep said about 10 years ago, Gates opened Auto Advantage at 4343 Grape Road. He said it lasted about 18 months before they closed; they just couldn't support the business. Mr. Leep said that's why you don't have used car dealerships raising their hands and begging to buy real estate on Grape Road; the business model does not support it.

Mr. Krueger said they have auto sales in Elkhart County at the airport. Are those local dealers? Mr. Leep said they are generally Lochmond and he said they've had sales there in the past as well.

Mr. Krueger asked Mr. Leep if he thought it had a negative impact on business in our area. Mr. Leep said no and that there are a lot of ways within the laws that they can still attract people to Mishawaka. They do it all the time by consolidating used cars from several of their locations, bring to Grape and Douglas and conduct a sale. Mr. Leep said they can still create that sale atmosphere, put up tents, put up temporary signage, play music and people still get that same sale atmosphere. He said taxes are paid by the dealership no matter where the sale is held.

Mr. Portolese said this commission is pro-business and we always bend over backwards and try to figure something out. He asked Mr. Leep if he was ever turned down for something such as this. Mr. Leep said he would never have any reason to request it because they have their own property on Grape Road.

Mr. Leep said last year they didn't have the opportunity to come here and tell their side of the story and Gates has a great story. He said they went out and ran a great sale, sold cars, it was clean and safe... he doesn't deny that. Mr. Leep said the long term effect by setting this precedent of anybody being able to come in.

Mr. Portolese said they weren't trying to vote for one group against another group, they would never do that. Mr. Leep said he wasn't inferring that.

Craig Kapson, Jordan Automotive Group, thanked the Board for letting them voice their opinion. Mr. Kapson said Gates has been a stellar member of the community and he has nothing against them. He said they have been in business since 1947 and yes they have come before this Board many times as their business has expanded and he appreciates the opportunity to give his opinion. He said he has been turned down by this Board too.

Mr. Kapson said he has fought some things and worked with the City to clean some things up, namely signs and other dealers did too. He said they all agreed to help clean the City up. Mr. Kapson said in the last few years, they have spent \$6.5 - \$7 million dollars on improvements as well as \$500,000 on landscaping the City asked them to put in. He said they worked with the City on the railroad crossing barriers to help keep trains from blowing their horns; that's what this is all about, working together as a community.

Mr. Kapson said the precedent that this Board will set can be chaos. He said auto dealers are survivors and this will create ways to get the job done and this doesn't need to be done. He asked that Mishawaka be kept clean. Let them go to the fairgrounds or other places and asks that the Board vote against this.

REBUTTAL

Matt Helmkamp said they don't dispute the other dealers have invested in the community and he doesn't want to do anything that will lessen their ability to be good dealers. He said it would be good for the City to have these types of sales and not send them to other places. Businesses located inside the mall will benefit from the increased activity at the mall. Mr. Helmkamp said he disagrees that they corrupt the atmosphere. On the contrary, it's a wonderful atmosphere to buy a car; people look forward to it.

Mr. Helmkamp said he realizes the City discourages transient merchants, but they are not transient; they are here and want to stay here. He said they are not a fly-by-night organization, but an inviting established business. He said a lot of energy is being wasted by fear of competition.

Mr. McCampbell closed the Public Hearing on Appeal #11-13.

Mr. McCampbell said if other dealers wanted to do this, they could. Mr. Prince said whether the mall would entertain the request is irrelevant to this discussion. Every dealer has the right to apply and go through the process.

Staff Recommendation

The staff has prepared recommendations and findings both for and against the request:

FAVOR

*Staff recommends in **favor** of Appeal 11-13, Use Variance, to allow for the temporary use of a portion of the University Park Mall parking lot for an off-site car sales event. The event proposes utilizing two inflated cold air balloons, two (2) tents, mobile office facility, and temporary signage. The Use Variance is subject to the following conditions:*

USES:

- *The event shall be limited to the display and sales of automobiles and light trucks for ten (10) days in May, June, and August of 2011 as presented.*

SITE PLAN:

- *A site plan/layout shall be submitted identifying the location of display areas, visitor parking, tents portable toilets, balloons, temporary lighting, and other related temporary improvements subject to staff review and approval. Written approval of the site plan/layout shall be required from University Park Mall, LLC.*

ACCESS/TRAFFIC CONTROL REQUIREMENTS:

- *Access to the event use shall be through existing mall entrances. Additional restrictions may be requested by the City of Mishawaka the Director of Engineering as deemed appropriate as part of the review of a site plan/layout. The City of Mishawaka Police Department may also request any modifications to layout, parking, access, or attention devices during the event if it is deemed problematic to through traffic, or any safety issue is identified.*

SETBACKS:

- *All tents, display/parking areas, portable toilets and large inflatable balloons shall be setback a minimum of 25 feet from any road right-of-way and 10 feet from any internal access drive.*

SIGNAGE/ATTENTION DEVICES:

- *A plan identifying the location and type of all signage/attention devices shall be submitted subject to staff review and approval. A maximum of two (2) temporary signs no larger than 4' X 8' shall be permitted on Grape Road. A maximum of two temporary signs shall be permitted along State Road 23. No inflatable air balloons shall be permitted. All signs and attention getting devices shall not flash or be animated where they are overtly distracting to the motoring public. Internal directional signs shall also be permitted as necessary provided they are not visible from surrounding major roadways.*

This recommendation is based upon the following findings of fact:

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the development is temporary and will maintain certain minimum developmental standards as outlined herein;*
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 area is surrounded by commercial development;*
3. *The need for the variance arises from some condition peculiar to the property involved in that the C-2 zoning does not permit vehicle sales, even on a very limited basis, thus requiring the Use Variance for the proposed use;*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance as drafted, would not permit the Appellant to hold their regional event at this site, specifically, the University Park Mall is one of the few regional facilities that has been inherently constructed to handle this type of event by having the appropriate access, lighting, and parking;*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial and the surrounding area is one of the largest consolidated retail areas in the State of Indiana.*

DENIAL

Staff recommends denial of Appeal 11-13, Use Variance, to allow for the temporary use of a portion of the University Park Mall parking lot for an off-site car sales event. The event proposes utilizing two inflated cold air balloons, two (2) tents, mobile office facility, and temporary signage. This recommendation is based upon the following findings of fact:

- 1. The approval has the potential be injurious to the public health, safety, morals, and general welfare of the community because the proposal would create an environment of unequal business practices that would discourage the on-going investment in new construction of car dealerships in Mishawaka, essentially having a negative impact on assessed valuation over time;*
- 2. The use and value of the area adjacent to the property included in the variance has the potential to be affected in a substantially adverse manner because the area has numerous existing car dealerships, all which have the appropriate zoning and have constructed their respective dealerships in accordance with City developmental standards. The proposed temporary sales do not require a corresponding investment/commitment to the City;*
- 3. The strict application of the terms of this chapter will not result in practical difficulties in the use of the property because the site was zoned, approved, and constructed for a regional shopping mall. The mall can continue operations with or without the requested variance.*

MOTION: Jim Trippel moved to forward Appeal #11-13 to the Common Council with no recommendation. Charles Krueger seconded; motion carried with a vote of 3-1 (Portolese).

ADJOURNMENT: 7:09 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner