

APRIL 12, 2011

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, April 12, 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, Ross Portolese, and Rosemary Klaer. In addition to members of the public, the following were also in attendance: Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

Don McCampbell explained the Rules of Procedure.

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

Ross Portolese declared a Conflict of Interest on Appeal #11-15. No other Conflicts of Interest were declared.

PUBLIC HEARING:

APPEAL #11-14 An appeal submitted by Helman Commercial Realty LLC, an Indiana Limited Liability Company, requesting a Use Variance for **1017 East Jefferson Boulevard** to allow auto repair and sales within a C-1 General Commercial property.

Max Helman, 17299 Pencross, Granger, presented the appeal. He said the property is zoned C-1 General Commercial, but would like the ability to do auto repair and have car sales on the property.

Charles Krueger asked Dr. Helman if he was aware of the conditions recommended by the Planning staff and did he agree with them. Dr. Helman said yes, he was aware of them and agreed with them.

Jim Trippel asked if someone was ready to move into the building. Dr. Helman said he had someone interested, but has been unable to reach them for several weeks and is unsure what happened. He said the deal may be on shaky ground.

Mr. McCampbell closed the Public Hearing on Appeal #11-14.

Mr. Trippel asked Ken Prince if a Use Variance was approved on this property not long ago. Mr. Prince said yes, but the request was for auto detailing and not sales or repair.

Mr. Krueger asked if Mr. Prince was aware there was no specific tenant for the building and did it affect his feeling about the vote. Mr. Prince said the request is either appropriate or it is not.

Staff Recommendation

The Staff recommends in favor of Appeal 11-14, a use variance to allow for auto sales and auto repair at 1017 E. Jefferson Boulevard subject to the following conditions:

1. *Use variance shall be limited to automobile repair and sales. No outside storage of materials and/or vehicle parts shall be permitted.*
2. *If floor drains in building do not exist, then an oil/grit interceptor will not be required. If floor drains do exist, oil/grit interceptor will be required for the shop area and cleaning detail station.*
3. *If oil/grit interceptor is required, a site plan shall be submitted detailing sanitary sewer layout with installation of the oil/grit interceptor. Plan shall include its size, location with respect to interior plumbing, and verify that restroom plumbing is down stream of unit.*
4. *Signage on this site needs to be located a safe distance from the Jefferson Boulevard right-of-way, and shall adhere to signage standards for the C-4 Automobile Oriented Commercial district.*
5. *Site shall comply with commercial landscape requirements. Landscaping shall be added as needed.*
6. *Any building modification shall be submitted to the Planning and Building departments for review and all appropriate building permits shall be obtained.*

This recommendation is based on the following reasons:

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have no impact on the surrounding industrial and commercial uses that currently operate there. The proposed use is consistent with the existing C-4 Automobile Oriented Commercial properties within the area.*
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 of the mixed commercial/industrial nature of the area.*
3. *The need for a variance arises from the nature of the area, where property owners are very protective of the intensive zonings of their properties. A use variance would allow the proposed automobile commercial use, while still protecting the commercial zoning for future use.*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current C-1 General Commercial zoning would not allow for the proposed automobile oriented commercial uses.*
5. *The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies other surrounding areas as Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.*

MOTION: Rosemary Klaer moved to forward Appeal #11-14 to the Common Council with a favorable recommendation. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #11-15 An appeal submitted by John Cataldo requesting a Use Variance for **3515 Bremen Highway** to allow more than two (2) tenants on C-1 General Commercial zoned property; and a Developmental Variance to allow for a reduction in parking spaces.

Brad Mosness, Abonmarche Consultants, 750 LWE, South Bend, appeared on behalf of the Appellant. He said the current plans were to demolish the existing building and erect a new building housing the Bruno's pizza business and two other businesses. Mr. Mosness also said they are requesting a reduction of parking spaces from the required 24 to 17. He said the pizza business is carry out and not a sit down restaurant and it only requires 7 spaces.

Mr. Trippel asked how the space will be divided. Mr. Mosness said it could be 1-3 spaces. No one has committed yet and the request is mainly for marketing purposes.

Mr. Portolese asked if the existing building will be demolished. Mr. Mosness said yes.

Mr. Prince said it would be for up to 3 uses, including the pizza carry out.

Mr. Trippel asked wouldn't the uses be restricted because of only 17 parking spaces. Mr. Prince said this property has a cross access easement with the beauty salon next door, although those spaces can't be counted toward this property's required spaces.

Mr. McCampbell closed the Public Hearing on Appeal #11-15.

Staff Recommendation

USE VARIANCE:

The Planning Staff recommends approval of Appeal 11-15 for a Use Variance to allow a carry out restaurant plus one to three tenants (total of four tenant spaces) within a C-1 General Commercial zoning. 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 is surrounded by other commercial developments and properties that are zoned for commercial uses;*
- 3. The need for the variance arises from some condition peculiar to the property involved because the property is zoned C-1 General Commercial which does not allow for more than 2 tenant spaces;*
- 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 only up to two tenant spaces. The property is too small in size to allow compliance with the developmental standards required if the property were to be rezoned to the appropriate zoning of C-2 shopping Center Commercial;*
- 5. The recommendation is consistent with Comprehensive Plan which indicates General Commercial for this area.*

DEVELOPMENTAL VARIANCE:

The Planning Staff recommends of Appeal 11-15 to allow a reduction in parking from 24 spaces to 17 spaces. 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 parking is sufficient to support the proposed uses. The proposed restaurant use is for carry-out only, which does not require the amount of parking that a typical sit down restaurant requires.*

3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the property is only 0.41 acres and does not allow ample land for development to comply with the required 24 parking spaces.*

MOTION: Jim Trippel moved to forward Appeal #11-15 Use Variance to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 4-0 (*Portolese abstaining*).

MOTION: Jim Trippel moved to approve Appeal #11-15 Developmental Variance. Rosemary Klaer seconded; motion carried with a vote of 4-0 (*Portolese abstaining*).

ADJOURNMENT: 6:10 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner