

JULY 12, 2011

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, July 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: David Bent, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

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Don McCampbell explained the Rules of Procedure.

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The Minutes of the June 14, 2011, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #11-27** An appeal submitted by City Group, L.L.C. requesting a Use Variance for **1753 East Twelfth Street** to allow more than two (2) tenants on C-1 General Commercial and C-4 Automobile Oriented Commercial District.

Charlene Rowe, City Group LLC, presented the appeal. She said the owner wants to redo the electric and make sure the foundation and basic building is up to code. The intent is to rent out spaces. Ms. Rowe said a tobacco store is interested in renting space and is waiting for approval of the Use Variance. She also indicated the parking lot and curbing will be redone.

Don McCampbell asked if they will redo the drainage. Ms. Rowe said yes. They will also redo all curbing in the parking area. They also want to put in a drain to a ditch to drain from the parking area.

Mr. McCampbell asked if they will utilize the same entrances. Ms. Rowe said yes.

Mr. McCampbell closed the Public Hearing on Appeal #11-27.

**Staff Recommendation**

*The Staff recommends in favor of Appeal #11-27 allowing a multi-tenant commercial building in a C-1 and C-4 zoned property subject to the following conditions:*

- 1. A final site plan shall be filed prior to new occupancy and that site deficiencies for the property shall be brought up to meet current City ordinances and engineering standards as determined by the applicable departments as part of the site plan review.*
- 2. Residential uses shall be prohibited.*

*This recommendation is based on 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 area is located in a commercial/ industrial corridor and the proposed uses are permitted in the C-1 General Commercial zoning district;*
3. *The need for the variance arises from some condition peculiar to the property involved in that the size of the lot is not large enough to comply with the developmental standards of the C-2 Shopping Center Commercial District. The C-2 standards require 50-ft building setbacks and 25-ft pavement setbacks from all property lines;*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because a multi-tenant commercial use/shopping center use exceeding two tenants is not permitted on the C-1 General Commercial/ C-4 General Commercial zoned lot; and*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area as General Commercial.*

**MOTION:** Jim Trippel moved to forward Appeal #11-27 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 5-0.

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**APPEAL #11-28** An appeal submitted by Lloyd Family Limited Partnership requesting a Developmental Variance for **711-921 West McKinley Avenue** to allow for a reduction in the required number of parking spaces.

John Lloyd, 4101 Edison Lakes Parkway, represented the Appellant and College Square and said they were requesting a reduction in the number of required parking spaces. He said the zoning ordinance requires 214 and they currently have 162. Mr. Lloyd said due to the close proximity of Bethel College, the center is becoming more pedestrian oriented so he doesn't see it having a negative impact.

Mr. Trippel asked if there was any period when all parking has been used. Mr. Lloyd said no, the center is 75% occupied, but it was never an issue when fully occupied.

Mr. Krueger asked if the purpose of the variance was for future development. Mr. Lloyd said, no, this was for compliance purposes. He said the proposed new tenant is a restaurant.

Mr. McCampbell closed the Public Hearing on Appeal #11-28.

Mr. Krueger asked how this came up. Ken Prince said they are proposing a change of use in a tenant space that was previously retail but will now be a restaurant. The zoning ordinance has different parking requirements for retail use and restaurant use, so the need for the variance.

Mr. Trippel asked Mr. Prince if he thought it would work out ok. Mr. Prince said he doesn't see it as a problem, but they will only be hurting themselves if parking does become an issue.

Mr. Krueger asked what type of restaurant it would be. Mr. Lloyd said nothing has been decided but they are in discussions with a pizza restaurant that would probably be geared toward students on campus.

#### **Staff Recommendation**

*The Planning Staff recommends approval of Appeal 11-28 to allow a reduction in parking from a required 214 spaces to 162 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 and the shopping complex and parking existing. Furthermore, the existing Sufficient Grounds coffee shop is utilized primarily by adjacent pedestrian college students and therefore does not contribute to additional vehicle traffic and needed parking on the site.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the property is existing and does not allow opportunity for parking expansion while maintaining safe and effective vehicular maneuvering through out the property. Given that the opportunity for expanded parking is not viable, the only way to allow for the proposed restaurant use is through the variance process.*

**MOTION:** Rosemary Klaer moved to approve Appeal #11-28. Ross Portolese seconded; motion carried with a vote of 5-0.

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**APPEAL #11-29** An appeal submitted by Foundation for the Center for Hospice & Palliative Care, Inc. on behalf of property owner Barbara Matheson requesting a Use Variance for **301 North Cedar Street** to allow a residence for visiting families, doctors, and guests of the Center for Hospice Care on R-1 Single-Family Residential property.

Mike Wargo, Chief Operating Officer, Foundation for the Center for Hospice and Palliative Care presented the request for Use Variance. He said Hospice was currently leasing space in several facilities in town and they want to consolidate their operations for St. Joseph County into a single campus that would be located along the river front.

Mr. Wargo said they have entered into agreements to purchase a total of nine properties in an area along Madison Street, dead ending into Central Park; the Moose property is there, Edgewater Florist is on the corner and three homes and some vacant lots that are located at the corner of Pine and Madison Streets. In addition they would like to purchase the home, 301 N. Cedar Street, for use as a "guest house." He said when they build the Hospice House facility which would be located immediately across the street, occasionally family members who are there to see loved ones who are in Hospice House may be there for extended periods of time and need a place to go and lie down and sleep. Mr. Wargo said that happens occasionally, not a lot, but when it does happen they would like to offer family a place that feels home-like to them.

Mr. Wargo said they also anticipate having physicians who are rotating through the area doing palliative care fellowships and they would have a place to stay as well. Our palliative care physicians will be working out of the current Edgewater Floral building that will be turned into a palliative care center, where physicians work with patients on an out-patient basis. The doctors that rotate through the area will spend time at Hospice House as well as go out and visit patients in their homes as well, but this will be a place for them to stay when in town. It

might be 3-6 months at a stretch. The Use Variance will allow the home to be used for this purpose.

Mr. Krueger asked if the warehouse that was torn down on Cedar Street is part of this project. Mr. Prince said the two industrial properties didn't have anything directly to do with Hospice. The City owns those properties and the property will be developed even if Hospice chooses not to go forward. He said a new entrance to Central Park will be created and could also be several first-time homebuyer lots.

Mr. Wargo said they are working on an arrangement with the City to swap some land they own near the fish ladder with some frontage along the river for future expansion of the Riverwalk.

Mr. Krueger asked how many people will be staying in the house at one time. Mr. Wargo said maybe an occasional family that would be staying there.

Mr. Krueger asked if they will lease the home. Mr. Wargo said no, the home will be provided free of charge, it's a service they provide through the Hospice foundation. He said last year they gave away a little more than \$1 million in services to people in the 8 county service area. The services included durable medical equipment, patient services, prescription medications, and a full range of things you need to be able to provide people as they are going through the dying process. Mr. Wargo said what this will do is add one more dimension to enable them to give people an opportunity to be able to go and lay down and rest other than the floor in patient's room or in the common area. Mr. Wargo cited an example of their Elkhart facility they recently had an 85 year old man whose wife was dying and he ended up staying in their Spiritual Reflection Room. He was there for 5 days; he would not leave and they had nowhere for him to stay. This will enable them to provide a comfortable place to lie down and prepare something to eat in the kitchen if they wanted to. It's another opportunity for them to continue to add dignity.

Mr. Krueger asked about the doctors who will be coming in. Mr. Wargo said they work with the Indiana School of Medicine on becoming a site for them for their physicians who are rotating through their palliative care specialist program and they do not have enough clinical sites in the Indianapolis area for them to be able to go see patients. He said they are the largest hospice in the State of Indiana and they see more patients than other programs. They have the opportunity to have the service of the physician, but they need to provide them a place to stay. They could put them in an extended stay hotel or if they had their own home, they could allow them to stay there. It makes it easier for them because they don't have to spend \$3,000 per month to house them.

Mr. Wargo said for this house, they would be completely remodeling it and making it more modern. They will also improve the look of the exterior of the building and remove a fence in the back yard and create a park-like setting to complement some of the neighbors' homes.

Mr. Prince asked Mr. Wargo to clarify the number of persons who would be staying at the house at any one time. Mr. Wargo said it's a three bedroom home. He anticipates they would have people, maybe a family of 5 from out of town, visiting loved ones who don't want to go too far away, they may be in town for a couple of days, and need a place for the children to sleep. It will create a comfortable, home-like environment as they come and spend final hours and visit family who are dying vs. an institutional setting. He said their Hospice house facilities feel very much like a home-like setting and not a traditional hospital setting.

Mr. Krueger asked what the maximum number of patients at Hospice would be. Mr. Wargo said they anticipate building a 10-12 bed in-patient unit. They don't know exactly how big it will be at this point. They do have a 7-bed facility in Roseland and they aren't sure what they

are going to do with that; close or build all new; continue to operate and build what they need in central Mishawaka. He said they really like the vicinity where they anticipate locating along the river; very peaceful and nice setting.

Mr. Wargo said they anticipate employing approximately 70 people initially; perhaps up to 100 down the road. The 70 employees would be based at the Mishawaka campus.

### **Opposition**

Jacquelynn Defauw, 315 Edgewater Drive, said they are excited to see Hospice come in as a good neighbor. She said they are in opposition to a few items. First, she asked if the home would be adding bedrooms during the remodeling. She said they are concerned about the maximum number of people allowed. She said if there is a family of 5 staying there, would there be two physicians staying there as well. Would they be able to put them up in another location? Would this house be segregated just for families or will they have physicians with them.

Ms. Defauw said another concern they have is the signage on the corner. She was concerned about lights from a sign shining in the home of the neighbor living at the corner of Cedar and Edgewater. They (she and her neighbors) are also concerned about the size of a possible sign and how it would affect their neighborhood.

Ms. Defauw also said the house doesn't have parking because of an existing garage. They have to park on Madison. Will a new garage be built in the back to put cars?

Ms. Defauw said the main reason they are excited about Hospice locating here is she lost a child when he was 5 years old and the services were wonderful.

Mr. Krueger said to Ms. Defauw she was using the plural many times "we", and asked her if she represented a homeowners association. Ms. Defauw said it's loosely based; they walk and talk together on a regular basis.

Mr. Krueger said there's nothing formal. Ms. Defauw said no, nothing formal.

Kathy McCleery, 309 N. Cedar St., said she lives right next door to the house in question. She said one of her major concerns was with the size of a sign. She said she's also concerned about the increase in traffic along Cedar. She said with a center that large she's not only concerned with car traffic, but with ambulance traffic as well.

Mrs. McCleery said she was confused and didn't know the difference between a Use Variance and a change in zoning. She is concerned that somewhere down the road that if they get the Use Variance to allow multiple families to come in and stay that will lead to a zone change later on if the facility becomes too much for them to handle financially or they decide to move it. Will the zoning be changed?

Mrs. McCleery said she and her husband moved there 7 years ago. It's a quiet, peaceful neighborhood. A lot of the families are older, grandchildren come to visit, and don't want to lose the camaraderie the neighbors have. She obviously wants the house sold, but would prefer it remain a one-family home. She said she's not sure how cleaning up the outside the property will better their neighborhood.

Mrs. McCleery also asked if the Use Variance were allowed, could it ever be reversed or does it go with the house. If Hospice decides to sell the house, does the variance go with the house and someone could go in and make it a bed and breakfast or something of that nature.

Mr. Prince said staff specifically asked Hospice to file a Use Variance instead of a rezoning for that very issue. He said the Use Variance is tied very specifically to the guest house for the Center for Hospice. If the property were ever to be sold, it would have to be sold as a single family residence, otherwise, they would have to come in and go through a rezoning or another use variance, but there's nothing to guarantee that use in perpetuity. He said when you rezone a property the rezoning goes with the property so there's a wide range of uses that are permitted. In this case, with the Use Variance, they could not put anything other than the guest house for Center for Hospice, and that's important to note. If Hospice were to sell the house to another entity, that other entity would have to come in and reapply for that use house.

Mrs. McCleery said she's still hasn't heard an answer as to how many people would be in the house at one time. She said she's alone most of the week as her husband travels. For safety reasons how many people would she be dealing with and it's a definite concern for her.

### **Rebuttal**

Mr. Wargo said he is very hesitant to say a specific number, 1 or 8; every family situation is going to be different. He said they have had patients where the time gets near have many people who come and spend time with them. From a parking standpoint, the plan is when they build Hospice House that the parking area nearby, currently Edgewater Floral, will be sufficient to accommodate all of the guests who will be coming to visit loved ones, as well as staff who work there (there will only be 3-4 people). He said the physicians who will work in this office will be housed in another building which will have parking.

Mr. Wargo said they anticipate having as many as 10-12 patients at one time. He said their average daily census is approximately 50%, Roseland facility is similar. There are times when they are maxed out and do not have any more beds; other times they don't have anyone. He said the average length of stay at the Hospice House is 5-6 days, most frequent length of stay is 2 days. So the people who come here to visit loved ones are coming for a very short period of time and they are going to congregate near Hospice House. He doesn't anticipate there will be a lot of people wandering up and down the street. The plan is to have the main entrance north where most people will be entering the campus. There might be some traffic along there, but the main entrance to the campus will be farther north on Cedar Street. So any families that will be staying at the house will be parking at Hospice House and walking over. It could be a family of 5 or a family of 8 and they could be there one night or 4 nights, but not long periods of time. Mr. Wargo said they won't be partying, perhaps preparing a meal.

Mr. Wargo said the physicians he mentioned earlier will not be traveling with families; the families are coming from somewhere to visit loved ones. The physicians might be someone coming through will be on a palliative fellowship and they need to house them for up to 6 months.

Mr. Wargo said Phase I the office buildings farther back. Phase II will not be opening until 2014-2016 and the facility use in the next few years will be very minimal. Also, there are not hotels close by. He said there are other hospice programs around the country that offer this amenity and not used often, but it's nice to be able to offer it.

Mr. Prince asked Mr. Wargo to elaborate on how the house will be used. Mr. Wargo said they envision it a staff member at Hospice House would make a determination whether or not they felt it would be appropriate to offer this particular service to a family. It would be something they would be very careful how they did that. It wouldn't be put in any of their marketing material.

Mr. Wargo said regarding signage, they don't anticipate having huge signs along Cedar because they do want people to enter at their main entrance farther north on Cedar. He said they will probably install a small campus style sign that would point the way to Hospice House. He said the existing sign at Edgewater Floral will probably be changed to something that says "Palliative Care Center."

Mr. Wargo said they want to have a separate ambulance entry so when people are coming in there will be a buffer with trees. Also, this isn't a business where ambulances have lights and sirens on when they enter and exit the property. The patients are generally coming from the hospital or a funeral home is coming to pick up.

Mr. Wargo said the primary entry point will be north on Cedar Street, far removed from the bridge and closer to Mishawaka Hardware. He said they also want a quiet neighborhood. He thought that would be a good place to enter the main campus. He also said they have three other sites under consideration and they want this site because this has the most appeal due to the residential nature. They don't want to be considered a development out in the middle of another development or medical facility. Hospice is a philosophy and a way to care for patients. They want to be in an area that is more family-friendly like a neighborhood and they like the idea of having a neighborhood.

Mr. Wargo said they are not planning a garage at the house at this time. It isn't a very long walk from the parking at Hospice House.

Mr. Krueger said there's a house at the east end right on Cedar Street. Mr. Prince said that house is currently privately held and is not part of this proposal. The long term plan is to acquire the property and extend the Riverwalk. It would be a City project, and not one of Hospice.

Mr. Krueger asked if Hospice pays property tax. Mr. Prince doesn't know if they would be paying property tax. He said in comparison, the hospital does not pay property taxes, but the medical office next door does. Mr. Wargo said their current facilities do not pay property taxes in Roseland or Elkhart.

### **Staff Recommendation**

*The Planning Staff recommends approval of Appeal 11-29 for a use variance for property at 301 N Cedar Street to be utilized as a residence for visiting families, doctors, and guests of the Center for Hospice and Palliative Care. 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/or improvements to the existing structure;*
- 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 adjacent to residential uses and the proposed use is residential in nature. No commercial use and/or office will be allowed as part of this use variance;*
- 3. The need for the variance arises from some condition peculiar to the property involved because the property is zoned R-1 Single Family Residential which does not allow residential uses that are apart of an institutional unit/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 does not*

*allow for the proposed residential use. To rezone the property to C-3 City Center Commercial, which would allow the proposed use, future potential commercial use and/or multi-family residential uses could be proposed for the property. The only means by which to allow the proposed use and maintain the residential use for the property is through the use variance process;*

5. *The recommendation is consistent with the Comprehensive Plan which indicates Low Density Residential for this area.*

**MOTION:** Jim Trippel moved to forward Appeal #11-29 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 5-0.

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**ADJOURNMENT:** 6:50 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner