

FEBRUARY 14, 2012

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, February 14, 2012, 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: David Bent, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

Don McCampbell explained the Rules of Procedure.

The Minutes of the January 10, 2012, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #11-47 An appeal submitted by W. Scott and Julia Robbins requesting a Use Variance to permit a dog day care and boarding facility with an outdoor play area at **2406 Schumacher Drive**. *Continued from the January 10, 2012 meeting. Appellant requesting withdrawal.*

Mr. McCampbell read a letter from the Appellant requesting this item be withdrawn. The Board unanimously approved the request.

APPEAL #12-03 An appeal submitted by JP's Complete Auto Care, Inc. requesting a Use Variance for **1802 West Sixth Street** to allow parking for automotive body work and repair shop, and a Sign Variance to permit a 3' X 12' sign on I-1 Light Industrial zoned property.

Jon Pieper of JP's Complete Auto Care, Inc. presented the Appeal. He said he would like to use the parking lot and install a sign on the building.

Charles Krueger asked if the parking area was part of his property. Mr. Pieper said yes.

Ross Portolese asked if the area was fenced in. Mr. Pieper said yes.

Don McCampbell asked Mr. Pieper if he had read the Conditions of Approval and was he in accordance with them. Mr. Pieper said yes, he will do the landscaping and painting in the spring.

Mr. Portolese asked how many people worked there. Mr. Pieper said 10 people on average. He is only using one half of the building and would like to use the parking lot so they could expand.

Mr. Krueger asked if he owned the property across the street. Mr. Pieper said no, but they owned the house immediately to the west of the building and the property to the east.

Ken Prince read letters of support from Anna Bowers, 1809 LWW; Janet McCain, 1809 W. 6th St.; and John Magrames, Magrames Motor Sales, 2001 LWW.

Mr. McCampbell closed the public hearing on Appeal #12-03.

Staff Recommendation

The Staff recommends approval of Appeal #12-03 to conduct a commercial automotive body repair/maintenance shop, to allow a wall sign measuring 3' by 12', and to permit overnight, outside parking at 1802 West Sixth Street subject to the following conditions:

- 1. Use variance shall be limited to automotive body repair and automotive maintenance is limited to indoors. No outside storage of materials and/or vehicle parts will be permitted;*
- 2. The previously submitted landscape plan plantings shall be executed in Spring 2012;*
- 3. Freestanding Signage on the site is limited to one non-illuminated monument style sign with a display area of no greater than four (4) feet high by eight (8) feet wide/ 32 square feet, and with a total sign height not to exceed five (5) feet and with permits secured from Building and Planning Departments;*
- 4. Temporary signage is prohibited.*

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 uses will have no impact on the surrounding commercial and residential uses that currently exist. The proposed use is consistent with the existing industrial 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/residential nature of the area along the railroad tracks. The recommended conditions will also ensure that the business will not negatively affect the residential neighborhood to the south and north. Additionally, the Appellants own the adjacent properties to the east and west;*
- 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. By right Resolution #2010-21 allows the existing automobile, commercial use while still protecting the industrial zoning for future use and also protecting the residential users to the north and south;*
- 4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because Resolution #2010-21 denies the Appellants' customers the safety of parking their disabled vehicles off the street in a secure, fenced area;*
- 5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies the site as Industrial surrounding areas as Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.*

MOTION: Jim Trippel moved to forward Appeal #12-03 Use Variance to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 4-0.

MOTION: Charles Krueger moved to approve Appeal #12-03 Sign Variance. Ross Portolese seconded; motion carried with a vote of 4-0.

APPEAL #12-04 An appeal submitted by James D. Wallenfelsz Revocable Lifetime Trust requesting a Conditional Use Permit for **1460 East Twelfth Street** to permit a distribution center for resin, fiberglass, and related products to the composites industry in I-2 Heavy Industrial zoned property.

Ivan Levy, Vice President and General Counsel for North American Composites Company, 1225 Willow Lake Blvd., St. Paul, MN, represented the Appellant. Mr. Levy said that North American Composites (NAC) is a part of Interplastic Corporation and has been in existence since 1959 and NAC is the distribution arm, no manufacturing. This facility is located in a heavy industrialized area and would permit manufacturing, but not the distribution.

Mr. Levy said a Conditional Use Permit is required for this type of business. The company purchases resin, fiberglass and they are made into composites and sold to the composites industry. The material is used in boats, counter tops, jet skis, transportation products, housing industry, shower stalls and bathtubs. None of those products are made by NAC. The product is delivered in drums and they turn around and sell to the customer base.

Mr. Levy said this facility had great interest to them. He said they used to go through a distribution company not owned by them. He also said Indiana is the second biggest composite market in the US next to Texas and felt they could no longer avoid entering the Indiana market and decided Mishawaka was the best location to do so. This facility was chosen for its ability to be expanded. Mr. Levy said there will be approximately 10 employees to start with an annual payroll of \$750,000.00.

Mr. Levy said the composites industry is generally not highly regulated, but the resin product is a flammable substance. He said the Fire Department would consider it Class 2C which is the lowest level of flammability. Because of that, they need to make \$650,000.00 in investments to the facility and buy \$500,000.00 worth of equipment. Mr. Levy said they hope to gain Council approval and they can then send a bid package to contractors. Once done, they will have the highest level of fire protection the fire code requires. And would also conform to the building code, federal and environmental regulations.

Mr. Krueger asked if the material came in liquid form. Mr. Levy said yes, most resins come in as liquid; however, fiberglass is not in liquid form.

Mr. Krueger said his concern was for groundwater contamination in case of spillage. Mr. Levy said the company has never had a major spill and that is the reason they go above and beyond the requirements for safety in the industry. He said they make sure all liquids are inside the facility.

Mr. Levy said the pad outside is impermeable and that was a concern to them prior to purchasing the property. Improvements will be made to the pad.

Mr. Portolese asked if the facility will conform to the three regulations just mentioned. Mr. Levy said, yes they would. They would be following National Fire Protection Association (NFPA) guidelines.

Mr. Krueger asked if they self-insured the property. Mr. Levy said they have an insurance company.

Mr. Trippel asked if they processed the drums. Jerry Davis, VP of Operations, said 99% of the product stays as received. There is some repackaging, once or twice a month, not a daily activity.

Mr. Krueger asked if they put the liquid into smaller containers. Mr. Davis said they met with two building contractors today and they plan to build a secondary containment area where they can back in a bulk tanker and pump the liquid into drums. The area will be well-ventilated to protect employee safety and measures will be taken to contain the material when received. He said the attitude they take with all of their facilities is to exceed all requirements.

Mr. McCampbell closed the public hearing on Appeal #12-04.

Staff Recommendation

The Staff recommends in favor of Appeal 12-04, a Conditional Use Permit to allow chemical bulk storage and warehouse distributing on property located at 1460 East 12th Street. This recommendation is based on 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 all required improvements will be made to the property and all improvements will adhere to all applicable 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 all required and appropriate precautionary measures will be implemented on the property. Furthermore, property adjacent to the north, east, and west are zoned for I-2 Heavy Industrial uses.*
- 3. Adequate measures will be stipulated to mitigate any potential adverse impact of the conditional use permit upon adjacent property. The property will be required to comply with any and all applicable fire codes and environmental requirements. Improvements to the property will be implemented which are designed to meet those requirements.*
- 4. Adequate measures have been taken to provide proper utilities, drainage, paved access roads, landscape buffering, fencing, leak proof dikes, safety precautions, and to minimize traffic congestion. The property is existing and currently consists of all applicable and required improvements to conduct the proposed use.*
- 5. The granting of the Conditional Use Permit is in the best interests of the community. The property is located amongst other heavy industrial type uses.*

MOTION: Ross Portolese moved to forward Appeal #12-04 to the Common Council with a favorable recommendation. Jim Trippel seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:25 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner