

APRIL 9, 2013

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, April 9, 2013, 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, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the March 12, 2013, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #13-08 An appeal submitted by Stuart Fahlbeck requesting a Use Variance for **3508 Lincolnway East** to allow for three (3) uses on a C-1 General Commercial zoning district property.

Stuart Fahlbeck, 3508 Lincolnway East, presented the appeal. He said the portion of the building previously occupied by Challenger Rental is not vacant, but occupied by Creative Pools; they have 2/3 of the building. Twin Branch Pack and Ship occupies the rest of the building. Mr. Fahlbeck said he's recently added DHL international shipping, Western Union, U-Haul, and a cellular service and he's getting ready to add fingerprinting for children's identification. He said he's requesting the Use Variance from the standpoint that while the building had been divided into thirds, but now has two tenants; it could go back to three tenants at some point in the future.

Mr. Fahlbeck said it's his understanding the U-Haul is the biggest issue. He isn't set up to have a lot of the vehicles and he doesn't like to have more than two parked there at any one time because more than that and you can't see the front of the building. He said he hopes to be able to drop that service at some point in the future, but right now it helps keep the lights on.

Mr. McCampbell asked Mr. Fahlbeck if he had reviewed the conditions of approval. Mr. Fahlbeck said yes and agrees with them.

Mr. Portolese asked how many vehicles will be on the property at any one time. Mr. Fahlbeck said there are only two there now and would not have more than five. He said he does what he can to get rid of them quickly.

Mr. Trippel asked if there are any Challenger vehicles stored on site. Mr. Fahlbeck said no, only U-Haul; there are no Challenger vehicles left.

Mr. Trippel asked Mr. Fahlbeck why he filed for the Use Variance if he only has two tenants in the building. Mr. Fahlbeck said partly for the future; he may want to divide up the space for three tenants again at some point. Mr. Prince said Peg Strantz contacted Mr. Fahlbeck when Twin Branch Pack and Ship opened and he was asked to bring the site into compliance. At the time, staff was unaware Challenger was winding down, but Mr. Fahlbeck decided to go ahead and request the variance in case things changed in the future.

Opposition

Robert White, 3422 Vistula, said his house faces Oakley and his complaint is with the U-Haul trucks. He said there isn't much space on the property and they sometimes block the view, especially on the west end of the property, and there isn't much space on his lot to have many trucks.

Mr. Portolese asked how many trucks were there. Mr. White said he has seen three box trucks and three trailers. When you try to turn north you have to pull all the way up to see and Creative Pool customers with pick-up trucks are getting pool stuff; it's a very busy place.

Elsie Brown, 140 N. Oakley, said when turning north from Lincolnway to get to Oakley Avenue you often have to stop and someone is going to get rear ended. If you can't see, it's an accident waiting to happen.

Rebuttal

Mr. Fahlbeck said he has made a conscious effort to make sure no vehicles are parked next to Vistula and thought he could bring a lot of needed services to the neighborhood. He said he's brought US postal, Fed Ex, international shipments services to the neighborhood and neighbors are happy he's there. It's been at his wife's behalf.

Mr. Fahlbeck said he's closed Challenger Rental and he's not excited about fighting with the neighbors about having a couple of trucks. He said he can't help that the owner of Creative Pools has a pick-up truck to service their customers. Mr. Fahlbeck said he's talking about the U-Haul trucks and he's made an effort not to have trucks close to Vistula and Lincolnway.

Mr. McCampbell closed the Public Hearing on Appeal #13-08.

Mr. Prince said the issue is the whole lot is non-conforming. We now have standards separating parking from the right-of-way. If approved, staff will work with Mr. Fahlbeck on striping of the parking lot.

Staff Recommendation

The Staff recommends in favor of Appeal #13-08 allowing a three tenant commercial building in a C-1 General Commercial zoned property subject to 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. No outside storage or display of moving items, such as dollies, shall be permitted.*
- 4. Curbing or wheel-stops shall be utilized in order to prevent encroachment of vehicles onto the adjacent city owned lot.*
- 5. Parking spaces shall be striped.*
- 6. Three commercial tenants are permitted on the site based on the current building and site layout. If any of these uses change to a more intensive use, a final site plan*

shall be filed and any site deficiencies for the property shall be brought up to meet all current City ordinances and engineering standards.

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 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 the small multi-tenant commercial use is not permitted on a single C-1 General Commercial 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 #13-08 to the Common Council with no recommendation. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #13-09 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 per year for the next three (3) years with temporary signage including banners and a mobile office facility for business transactions and securing of valuables.

Clint Emberton, General Sales Manager, Gates Automotive, 714 Dice Court, South Bend, presented the appeal. He said they are once again requesting a Use Variance in order to hold up to three used car sales events in the J C Penney parking lot at University Park Mall for the next three years and the request is identical to the previous requests.

Mr. Emberton outlined 5 findings of fact and, they are as follows:

1. He said the approval will not be injurious to public health. They go to great length to address public health concerns such as trash receptacles, sanitary facilities, tents to provide comfort for staff and customers. No complaints have been received by the City.
2. The use and value of area will not be adversely affected. Mr. Emberton said he is unaware of anyone within the 300' who filed a qualified complaint against last year's event. They use approved and safe entrances from Grape and SR 23 and chose the

least traveled area of the mall. This has proved to be an asset to their business model. The mall and outlying businesses enjoy the benefit the high volume traffic brings.

3. For the past 4 years Chevrolet has maintained an active display inside of the mall, but cannot sell cars in the mall. Mishawaka had the foresight to approve the mall 30 years and it is a regional attraction.
4. The strict application of the ordinance causes a hardship. The variance is for Simon Property, not Gates Chevrolet. They are proud to partner with the mall. He said staff finds: University Park Mall is one of a few regional facilities who can handle this event. A study from last year's event showed nearly 30% of sales were from outside of Indiana and outside our County and over 3,000 people were drawn to the event. Only sold to 30% of qualified customers, other 70% of traffic drove down the road and shopped at other dealerships or vendors in the area. Mr. Emberton said the mall is in the business of leasing and they want the same opportunity as other businesses to hold this event.
5. In 2012, Gates complied with all layout requirements for the sale, allowed for unimpeded traffic flow and had additional precautions as well.

Mr. Trippel asked Mr. Emberton if other car dealerships have events at the mall. Mr. Emberton said they could if they wanted.

Mr. Prince read a letter of remonstrance from 1st Source Bank regarding blocked mall access road. Mr. Emberton said they have no tents that obstruct the access road. They do, however, have safety barrels set up near the bank for the safety of Gates' employees. They were trying to slow the traffic down so they could have a safe event, but they will leave enough space between the barrels so people can use the road. Mr. Prince suggested Mr. Emberton contact 1st Source Bank to discuss their concerns.

Mr. Portolese asked if they have previously had three events each year. Mr. Prince said yes, but the difference this year is they are asking to do three events for a three year period. He said the event hasn't changed from the beginning and the three year request is a reasonable term. Mr. Prince also said if there had been a problem, we would have contacted them and they would have corrected it.

Ms. Klaer said she thinks the three year period is fine since we haven't had a problem with the event in the past, with the exception of the concerns from 1st Source.

Mr. McCampbell closed the Public Hearing on Appeal #13-09.

Staff Recommendation

*Staff recommends in **favor** of Appeal 13-09, 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 for three (3) ten day periods per year, for the next three years. The event proposes utilizing three (3) 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 2013, 2014, and 2015 as presented.*

SITE PLAN:

- *A site plan/layout shall be submitted identifying the location of display areas, visitor parking, tents portable toilets, 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.
- **All mall service drives shall remain open at all times.**

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.

MOTION: Ross Portolese moved to forward Appeal #13-09 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #13-10 An appeal submitted by Helen Graham requesting a Developmental Variance for **2701 Milburn Boulevard** to allow an access ramp with an 18' front setback and a 0' exterior side setback.

Erin Newsome, Real Services, appeared on behalf of the Appellant. Ms. Newsome said Ms. Graham is 96, suffers from dementia, and can only get around with a wheelchair and the area where the ramp was installed was the only place it could be installed. She said without the ramp, she would not be able to live at home and the ramp doesn't negatively impact neighbors.

Mr. McCampbell closed the Public Hearing on Appeal #13-10.

Staff Recommendation

Staff recommends **approval** of Appeal 13-10 to allow an access ramp to be constructed with an 18-ft front-yard setback and a 0-ft exterior side—yard 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 were 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 ramp will extend no further in the front yard than the adjacent residential homes ;
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance has no provision to accommodate a situation such as the Appellant's where special access to an individual's home is needed.

MOTION: Jim Trippel moved to approve Appeal #13-10. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #13-11 An appeal submitted by Rocky R. Geans Real Estate LLC requesting a Use Variance for **1923 North Home Street** to allow two (2) above ground diesel fuel storage tanks.

Rocky Geans, 1125 Quigly Place, South Bend, said his request is to have above ground storage for diesel fuel used by his trucks and equipment.

Mr. Trippel asked Mr. Geans if he had met all State requirements. Mr. Geans said yes.

Opposition

Ron Grzeskowiak, 1927 E. LaSalle Avenue, said he is opposed to the tanks. He said there is 120' from his house to his shared property line with L.L. Geans and on any given there when the wind is blowing from the south it's a dust bath back there. Mr. Grzeskowiak also said they have trucks running from 5-6:00 a.m. and 120' isn't a lot of distance; he knows what diesel fuel smells like. He said there are times when his wife can't go outside because of the dust problem and must keep the windows closed. He also wanted to know that policy they may have for fueling times.

Mr. Grzeskowiak said he still has his own well water and wondered what would happen to the water table and what would happen to his water. He said you can't do a lot about Mother Nature, but he is strongly opposed to putting in tanks so close to his property. It would be better if they could be located farther south on Geans property.

David White, 1913 E. LaSalle, said he also had concerns with the tanks and asked why they couldn't be located on the south side of the property as opposed to right up against the fence. Mr. White said he hears trucks run at all hours and isn't sure what the ordinance has to say about that.

Mr. White said he also has well water and asked if they would be checking the quality periodically.

Rebuttal

Mr. Geans said this is the first he's heard of the dust problem but will do dust control.

Mr. Geans also said he had a fuel tank until 2010, but he didn't know he needed a permit for it and tried to get fuel from the facility on Jefferson Blvd. He just wants to replace the tanks that had been there for 15 years. He also said the tanks will not be on the north side of the property, but farther south and will be in line with where the trucks go and there's a concrete pad.

Mr. Portolese asked Mr. Geans if he would be willing to meet with the neighbors at the site to discuss their concerns. Mr. Geans said he would be happy to meet with them; he wants to be a good neighbor.

Mr. Prince said it's about 90' from the property line with the neighbors. He said regarding the safety of the tanks, the water department has studied them and determined they pose no great problem given the small size of the tanks and new technologies.

Mr. Trippel asked if they were moving a tank. Mr. Prince said these are 550 gallon tanks and it's a low frequency operation; that's just the nature of heavy industrial property being directly adjacent to single family residential. This property was developed long before our current zoning standards.

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

Staff Recommendation

The Staff recommends in favor of Appeal 13-11 for a Conditional Use Permit to allow (2) 550 gallon above ground diesel fuel storage tanks at property located at 1923 N Home Street. This recommendation is based on the following findings of fact:

The 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 installation of the tank will conform to all applicable safety requirements as determined/interpreted by the City of Mishawaka Fire Department;*
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 tanks will be set at least 80-feet from the adjacent residential properties to the north and will be placed in an appropriate concrete containment vault.*
3. *The need for the variance does arise from a condition peculiar to the property involved because an above ground fuel storage tank is not a permitted use in the I-2 Light Industrial District without a conditional use permit.*
4. *The strict application of the terms of this chapter constitutes an unnecessary hardship if applied to this property in that without the availability of onsite fuel, the company would not be able to fuel their vehicle and equipment fleet; and*
5. *Granting of this variance will not compromise the integrity of the Mishawaka 2000 Comprehensive Plan which indicates Industrial.*

MOTION: Jim Trippel moved to forward Appeal #13-11 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #13-12 An appeal submitted by 2-BE's Properties LLC requesting a Use Variance for **4028 Lincolnway East** to allow a professional office and residential use with a 4' X 7' sign on an R-1 Single Family Residential zoned property.

No one was present to present the appeal. The Board unanimously approved continuing the item to the May 15, 2013, meeting.

APPEAL #13-13 An appeal submitted by Meijer Stores Limited Partnership/MRC requesting Sign and Developmental Variances for property located in the **3600 Block of South Bremen Highway** to permit signage to project above the parapet wall and a reduction in the required landscaping.

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellants. He said this property was recently rezoned to allow for a drive-thru restaurant that will be located at the southeast corner of Fulmer Road and Bremen Highway. Mr. Ballard said it's a proposed McDonald's Restaurant and it will have a double drive thru.

Mr. Ballard said he met with the Planning staff to discuss the site and this restaurant will have an updated architectural style which incorporates new facades with signage incorporated into the facades. He said the logo and signage has been placed above the parapet wall and staff suggested they request a variance ensuring a standard process for review and approval.

Mr. Ballard also said the location of perimeter trees was discuss and staff has asked to relocate some trees closer to the building and parking areas which would create a natural visual break.

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

Staff Recommendation

The Planning Staff recommends of Appeal 13-13 a sign variance to allow signage to extend beyond the roof line. This recommendation is based upon the following Findings of Fact:

- 1. Approval will not be injurious to the public health, safety, morals or general welfare of the community because the 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 signage is an integral part of the architectural design and represents an investment in the community;*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because corporate standard signage cannot be utilized on a building that was designed to incorporate the proposed roof signage.*

The Planning Staff recommends of Appeal 13-14 to allow a variance to vary the location of proposed tree plantings. 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 required number of tree plantings will still be installed*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the ordinance does not allow flexibility for varied placement of perimeter tree plantings.*

MOTION: Jim Trippel moved to approve Appeal #13-13 Sign Variance. Rosemary Klaer seconded; motion carried with a vote of 5-0.

MOTION: Ross Portolese moved to approve Appeal #13-13 Developmental Variance. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #13-14 An appeal submitted by McDonald's Corporation c/o KADA Partnership requesting a Sign and Developmental Variance for **5704 Grape Road** to permit signage to project above parapet wall and a reduction in the required number of parking spaces.

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellants. Mr. Ballard said this request is similar to the previous appeal in that they are renovating the existing building to the current architectural standards, exterior and interior, and the signage will be located above the parapet wall and will be incorporated into the architecture.

Mr. Ballard said they are also requesting a parking variance. He said they wanted to maintain the existing 50 spaces, but it looks like it will be closer to 47. They will be closing

the entrance at the southwest corner of the property and converting that area into parking spaces. He said they have the advantage of a recorded agreement with the adjacent shopping center to use some of their parking and they have operated with 50 parking spaces for roughly 20 years.

Mr. McCampbell closed the Public Hearing on Appeal #13-14.

Staff Recommendation

The Planning Staff recommends of Appeal 13-14 a sign variance to allow signage to extend beyond the roof line. This recommendation is based upon the following Findings of Fact:

- 1. Approval will not be injurious to the public health, safety, morals or general welfare of the community because the 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 signage is an integral part of the architectural design and represents an investment in the community;*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because corporate standard signage cannot be utilized on a building that was designed to incorporate the proposed roof signage.*

The Planning Staff recommends of Appeal 13-14 to allow a variance for a reduction of parking form 93 spaces to 50 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 requested number of parking spaces currently exists on site. Furthermore, the owner of this property has a recorded agreement to allow for shared parking between the McDonald's site and the adjacent shopping center parking.*
- 3. Strict application of the terms of this chapter will result in practical difficulties because the current developed site is not sufficient in size to accommodate the required 93 parking spaces.*

MOTION: Ross Portolese moved to approve Appeal #13-14 Sign Variance. Rosemary Klaer seconded; motion carried with a vote of 5-0.

MOTION: Rosemary Klaer moved to approve Appeal #13-14 Developmental Variance. Ross Portolese seconded; motion carried with a vote of 5-0.

Mr. Prince said there is a staff conflict for the May meeting and would like the meeting date changed to Wednesday, May 15. Mr. Portolese moved to approve the change of date. Mr. Lentsch seconded; motion carried.

ADJOURNMENT: 7:10 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner