

JULY 9, 2013

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, July 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 June 11, 2013, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #13-21

An appeal submitted by Todd Sikorski, Diana S. Ritchie, Jack W. Ritchie, JoAnn T. Rorie, and Jessie O. Rorie requesting a Use Variance for **1022 Willow Street** to permit a duplex in an R-1 Single Family Residential District. *Continued from the June 11, 2013 meeting. Appellant requests continuance to August 13 meeting.*

Mr. McCampbell said the Appellants have requested this item be continued to the August 13, 2013, meeting. The Board unanimously approved the request.

APPEAL #13-23

An appeal submitted by Ryan and Melissa Flanigan requesting a Developmental Variance for **2312 East Third Street** to allow a front porch addition with a 20' front building setback.

Ryan Flanigan, 2312 E. Third Street, presented the appeal. He said they are requesting to add a front porch deck with a 20' front setback.

Mr. Trippel asked if he would be changing anything. Mr. Flanigan said they're building a wood deck.

Mr. McCampbell closed the Public Hearing on Appeal #13-23.

Mr. Trippel asked Mr. Prince why the variance was needed if they weren't changing anything. Mr. Prince said the variance is necessary because the deck would be wood.

Staff Recommendation

Staff recommends approval of Appeal 13-23 to allow the construction of a front porch deck with a 20' front 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 requested 20' setback is not substantial and is consistent with other homes in the neighborhood; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the existing front cement landing is deteriorating and the porch will increase the safety and accessibility to the home's main entrance.*

MOTION: Jim Trippel moved to approve Appeal #13-23. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #13-24 An appeal submitted by SEC Investments, LLC, requesting a Developmental Variance for **1700-1800 block of East Day Road** to allow a reduction in parking spaces from 151 to 136.

Terry Lang, Lang Feeney & Associates, 715 S. Michigan Street, South Bend, appeared on behalf of the Appellants. He said this project would be Phase II of what currently exists immediately to the west and will be offices.

Mr. Lang said they are requesting a parking variance, reducing from 151 to 136 spaces. He said they found with the existing offices, they have 100% occupancy and parking is about 60% occupied. Mr. Lang said the requested variances are similar to the existing parking occupancy.

Mr. Trippel asked if the parking spaces would be available to all three buildings. Mr. Lang said yes.

In Favor

Francis Birdwiller said he lives behind and around the corner from this property. He said when the original buildings were built they were supposed to put up a fence around the property and wondered if it was still planned. Mr. Feeney said yes.

Mr. McCampbell closed the Public Hearing on Appeal #13-24.

Staff Recommendation

The Planning Staff recommends approval of Appeal 13-24 to allow a reduction in parking from 151 spaces to 136 spaces for a commercial office complex. 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 use;*
3. *Strict application of the terms of this chapter will result in practical difficulties in that the ordinance does not allow flexibility for reduced parking for uses where a shared*

situation exists for multiple tenants in the same complex. The ordinance was written as one standard for a single user in the C-1 General Commercial zoning district.

MOTION: Charles Krueger moved to approve Appeal #13-24. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #13-25 An appeal submitted by Max Helman requesting various Developmental Variances for the southeast **corner of East Jefferson Boulevard and Willow Street** to allow for a reduction in parking, landscaping, and dumpster enclosure visible from the right-of-way.

Terry Lang, Lang, Feeney & Associates, 715 S. Michigan Street, South Bend, appeared on behalf of the Appellant. He said he would like to amend the petition and withdraw the request for parking variance. Mr. Lang said he met with staff earlier and the size of the building has been modified and the reduction in parking spaces is no longer necessary; however, still asking for landscaping and dumpster enclosure variances.

Mr. Lang said years ago a car wash was on this property and a new building is now being proposed. The building will be located on the southeast corner of the property.

Ms. Klaer asked if the building will be for auto sales and service. Mr. Lang said yes.

Mr. McCampbell closed the Public Hearing on Appeal #13-25.

Mr. Krueger asked staff if they had any comments about amending the appeal. Mr. Prince said staff had conveyed to the appellant that a parking variance was not appropriate and parking should meet the minimum standards of the ordinance. Staff had no problem with landscaping or dumpster enclosure.

Ms. Klaer asked if there would be a sidewalk in front of the building. Mr. Prince said he doesn't recall seeing a comment from Engineering regarding a sidewalk and the building meets the required setback from the street.

Mr. Krueger asked if the Board needed to put a contingency on the appeal. Mr. Prince said to mention the amendment in the motion.

Staff Recommendation

*Staff recommends **approval** of Appeal 13-25 to allow for a reduction in tree spacing along the east property line and to allow a dumpster enclosure to be visible from public right-of-way. 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 there is existing plantings and trees between the site and the property adjacent to the east; and the dumpster will be appropriately enclosed and located south of the Jefferson Blvd and Willow Street intersection;*

3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the property is currently paved and the proposed trench drain is needed to properly provide drainage to the adjacent retention basin. Trees cannot be planted on top of this trench drain. Furthermore, the property is located on a corner lot which does not make it possible to locate the dumpster where it will not be visible from a public right-of-way.*

Staff recommends **denial** of Appeal 13-25 to allow for a reduction in parking from a required 28 parking spaces to a minimum of 23 parking spaces: . This recommendation is based upon the following Findings of Fact:

1. *Approval will be injurious to the public health, safety, morals and general welfare of the community because a reduction in parking could cause additional traffic and parking along public right-of-ways.*
2. *The use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner because there are existing residential properties located to the south. The lack of off-street parking will could parking for the business to occur on the street in front of the adjacent residential properties.*
3. *Strict application of the terms of this chapter will not result in practical difficulties in the use of the property because the property is not currently developed and revision to the site plan and/or architectural designs can be made to provide for the required parking.*

MOTION: Jim Trippel moved to approve Appeal #13-25 as amended, removing the request for parking variance. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #13-26 An appeal submitted by Stonebridge Mishawaka, LLC, requesting a Developmental Variance for **625 Dublin Drive** to allow a privacy fence within the rear yard setback.

Ted Foster, managing member of Stonebridge LLC, said he was requesting a privacy fence to be installed in the rear setback area along Catalpa. He said it will be 6' tall and 10' into the required rear yard setback.

Mr. Krueger asked if there was a homeowner's association. Mr. Foster said yes, and two members were in attendance.

In Favor

Tom Nelson, 3617 Sutton Drive, said he was on the Board and was here representing the homeowner's association. He said they've had a few instances of vandalism over the past few years and recently around the pool area. Mr. Nelson said he is hopeful the fence will discourage people from coming in.

Peter Nemeth, 613 Dublin Drive, said he concurs with the request and thinks Mishawaka should be proud of the development. He said he has lived there 6 years and would appreciate the Board's favorable consideration.

Mr. McCampbell closed the Public Hearing on Appeal #13-26.

Staff Recommendation

Staff recommends approval of Appeal 13-26, to allow a privacy, wood or vinyl, fence to be installed 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 the fence will not block any site lines or nor will it create any blind spots along Catalpa Avenue;*
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 fence represents an investment in this neighborhood, and will be installed 15 feet from Catalpa right of way; 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 setback would butt up against proposed residences that will have a 25 foot rear yard setback.*

MOTION: Ross Portolese moved to approve Appeal #13-26. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #13-27 An appeal submitted by Sells Enterprises, LLC, requesting Use and Developmental Variances for **805 Cleveland Street** to allow an indoor automotive sales facility, and various parking, pavement, building and pavement setbacks, and landscape variances.

Mike Danch, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellants. He said the property is located just south of Regal Bowling Lanes and the contingent purchaser of the property would like to have an indoor car sales facility. Mr. Danch said the building is approximately 15,000 sqft.

Mr. Danch said the car sales use would fall under the C-4 zoning classification but would also need variances. He said one variance would be from the parking requirement; the zoning ordinance requires 87 but they would like 7 because all cars will be indoors and outdoor parking is not needed.

Mr. Danch said the Appellants want to use the existing gravel parking lot and a portion will be paved per ADA requirements. He also said they are requesting a landscape variance with less perimeter trees due to an easement along the northern part of the property. Mr. Danch said the buildings are so close to property lines and there is simply no place to put trees. The site is an older industrial park and none of the buildings are new.

Mr. Krueger asked if the Appellants agree with the conditions. Mr. Danch said yes.

Mr. McCampbell asked if this was new in automotive sales. Mr. Danch said it's kind of a trend and they are hoping it will go.

Mr. Krueger asked if they would be sports cars. Mr. Danch said there may be a variety of cars. He said the contingent purchaser has several car lots in the city now.

Mr. Krueger asked about signage. Mr. Prince said they would be entitled to whatever signage is allowed in I-2 zoning district and he has no problem with that. Signage is based on lot frontage.

Staff Recommendation

The Planning Staff recommends approval of Appeal 13-27 to allow for indoor car sales in an I-2 Heavy industrial district subject to the following conditions:

1. The use of the property shall be limited to indoor car sales only (no auto body repairs or oil changes) without site modifications. The expansion of the proposed use into repair and other accessory uses may be permitted but shall require the incremental improvement of the site and building to bring it into conformance with current C-4 standards over time commensurate with the proposed change. Any change in use shall require a final site plan submission and review.
2. All proposed improvements including parking and adding gravel to maintain existing gravel paving shall require an administrative site plan approval prior to construction.
3. A sanitary sewer easement shall be provided as requested by the City of Mishawaka Engineering Department prior to the occupancy of the building.
4. Building permits shall be required for the review and inspection of proposed building modifications. Current safety code issues, if they exist, must be brought up to current code.
5. A maximum of two vehicles may be displayed outside at any given time. Additional vehicles may be displayed but shall be considered an increase in use that would be subject to condition #1 herein.

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 adjacent properties to the south, east, and west are all zoned for industrial and the proposed use would allow for the occupancy of a building that has remained vacant for over a decade;
3. The need for the variance arises from some condition peculiar to the property in that it is located in an industrial area and has very limited current industrial applications which has caused it to sit vacant for an extended period of time;
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 commercial use. The only means by which to allow the proposed indoor car sales use and maintain the current industrial standards is through the use variance process;
5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates industrial uses for this area.

MOTION: Rosemary Klaer moved to forward Appeal #13-27 to the Common Council with a favorable recommendation subject to the conditions of approval. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #13-28 An appeal submitted by Cambridge Square Cooperative, Inc., requesting a Sign Variance at **239 West Catalpa Drive** to allow (2) freestanding signs; (1) 5'x9'2" sign on a fence structure and (1) 4'x1'10" sign on metal posts.

Randy Whiteman, US Signcrafters, 216 Lincolnway East, Osceola, represented the Appellant. He said they are asking to replace existing signage. Mr. Whiteman said at one time Cambridge Square had larger signs, but with the expansion of Main Street the monument sign was removed and there is virtually no place to install the new sign. He also said they really need two signs; one on Grape Road as well as Main Street to identify the development.

Mr. McCampbell closed the Public Hearing on Appeal #13-28.

Staff Recommendation

The Staff recommends approval of Appeal #13-28 to allow two (2) replacement apartment identification signs for Cambridge Square Cooperative, Inc. as described above; one at the southwest corner of N. Main and Catalpa; and a second sign at the southeast corner of Grape and Catalpa. Recommendation for approval 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 all state and local building codes will be adhered to during construction, and vision clearance will be maintained for the traveling public;*
- 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 replacing unsightly signage and creating new signs represents an investment in the neighborhood; and,*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because the 19+ acre property faces three roads – Catalpa Drive, Grape Road and Main Street – and one sign wouldn't be enough to allow visitors and delivery drivers to find the apartments.*

MOTION Charles Krueger moved to approve Appeal #13-28. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #13-29 An appeal submitted by Kupiec Properties LLC, requesting a Sign Variance at **212 West Edison Road** to allow a new sign within the required front setback.

Randy Whiteman, US Signcrafters, 216 Lincolnway East, Osceola, represented the Appellant. He said the property owner would like to install a new sign, but utilize the existing structure. The new sign would be smaller and more attractive. Mr. Whiteman said the owners have invested a significant amount of money updating and improving the center. The existing sign is approximately 20 years old and the new sign will greatly enhance the center.

Mr. McCampbell asked if the sign would be moved farther back. Mr. Whiteman said they would prefer not to because the farther back the sign is placed, the buildings would block visibility. He said Frankie's BBQ has limited exposure and the owners are trying to make sure the businesses have a viable shot at success.

Mr. McCampbell asked if the base of the sign would be smaller. Mr. Whiteman said yes, the base and the sign are smaller.

Mr. McCampbell said he is familiar with the site and said he finds it hard to see when exiting the parking lot. Mr. Prince said when he and Mr. Whiteman met they talked about moving the pole back. Mr. Whiteman said the owner would prefer not to move the sign back. Mr. Prince said the sign visibility would not be compromised if moved back a foot or 2.

Mr. McCampbell closed the Public Hearing on Appeal #13-29.

Mr. Krueger asked if they agreed to move the sign back. Mr. Prince said they won't be able to figure that out until they take the sign apart.

Staff Recommendation

*Staff recommends **approval** of Appeal #13-29 to allow a new freestanding sign with the leading edge of the cabinet seven (7) feet from the right of way for Hawthorne Square located at 212 West Edison. This recommendation is based upon the following Finds of Fact:*

- 1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because the sign will be located on the Appellant's property, outside of all City right-of-way and utility easements, and will not create a visual obstruction to motorists entering and exiting the property;*
- 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 sign cabinet is smaller than the existing sign, and the sign will not block signs on adjacent business properties; and*
- 3. Strict application of the terms of the On-Premise Sign Standards will result in a practical difficulty in the use of the property because the ordinance doesn't take into consideration existing foundations and utilities.*

MOTION: Jim Trippel moved to approve Appeal #13-29. Rosemary Klaer seconded; motion carried with a vote of 5-0.

Mr. Prince said Peg's brother was killed in a car accident on Sunday. Services will be held at Vineyard Church at 11:00 a.m. Saturday.

ADJOURNMENT: 6:32 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner

