

DECEMBER 10, 2013

BOARD OF ZONING APPEALS  
CITY OF MISHAWAKA, INDIANA

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, December 10, 2013, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Charles 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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Ross Portolese moved to adopt the 2014 Rules of Procedure and 2014 meeting calendar. Rosemary Klaer seconded; motion carried with a vote of 5-0.

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Mr. McCampbell explained the Rules of Procedure.

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

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #13-47** An appeal submitted by Yolanda Demske requesting a Use Variance for **1216 West Eighth Street** to permit the outside storage of portable restrooms on I-1 Light Industrial Zoned property. *Continued from the November 12, 2013, meeting.*

Brian Rutherford, Burns Rentals, 332 W. Mishawaka Avenue, presented the request. He said they want to store portable restrooms on the property.

Mr. McCampbell asked how long they have been storing the portable restrooms on the property. Mr. Rutherford said 8 months.

Mr. McCampbell said it looked like more have been added since the last time he looked. Mr. Rutherford said construction goes down this time of year and they are asked to come and pick them up. He said they want to store up to 50, but if there are more they can transfer some to their South Bend location.

Mr. Portolese asked if they are disinfected before being stored on site. Mr. Rutherford said yes, there is no waste in them.

Mr. McCampbell said Staff had several conditions of approval and did he have a problem with any of them. Mr. Rutherford said he had no problem with the conditions.

Mr. Portolese asked if there had been complaints. Ms. Strantz said Code Enforcement brought the situation to her attention.

Mr. Rutherford said he had met with Code Enforcement officers at the site and servicing the vehicle and starting the vehicle emitted an odor and that doesn't happen at the location any longer.

Mr. Prince said Councilman Emmons stopped by his office and indicated that he had received a complaint and Mr. Prince suggested Mr. Rutherford speak to Mr. Emmons prior to the Council meeting on Monday. Mr. Prince said he isn't sure if the complaint was regarding the odor, but Mr. Emmons was concerned about odors and thought the toilets were being disinfected on the property.

Mr. McCampbell closed the Public Hearing on Appeal #13-47.

**Staff Recommendations**

*The Staff would recommend Approval of Appeal # 13-47 for 1216 West Eighth Street to permit outside storage of portable restrooms (units) with the following conditions:*

- 1. Storage shall be limited to the current paved portion of the rear yard.*
- 2. The units shall maintain a 5 foot setback at all times from the rear property line.*
- 3. The units must be cleaned and disinfected prior to storage at 1216 West Eighth St.*
- 4. Chemicals may not be stored at the site.*
- 5. Privacy slats shall be fitted to the existing fence.*
- 6. The units shall not taller in height than the fence.*
- 7. All improvements to 1215 West Eighth Street, as documented on Administrative Site Plan 05-F, dated 10/6/2005, and Recording Number 05549958, shall be completed by June 1, 2014.*

*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 east and west are zoned industrial;*
- 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 outside storage use. The only means by which to allow the proposed outside storage of portable restroom use and maintain the current industrial standards is through the use variance process;*

5. *The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies the area as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.*

**MOTION:** Charles Krueger moved to forward Appeal #13-47 to the Common Council with a favorable recommendation. Charles Trippel seconded; motion failed with a vote of 2-3 (*McCampbell, Portolese, Klaer*). The appeal was forwarded to the Common Council with an unfavorable recommendation.

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**APPEAL #13-49** An appeal submitted by LTR LLC requesting a Use Variance for **1315 Milburn Boulevard** to allow three (3) uses on a C-1 General Commercial zoned property.

Keith Haza, 2571 W 900 N, Columbia City, IN, Regional Manager for Family Video and Marco's Pizza. He said back in 2006 when they built the Family Video they installed a demising wall for two spaces for lease. Mr. Haza said Marco's Pizza opened last year and that left them with the third space. He said in 2006, they understood a Use Variance would be needed to have a third tenant in the C-1 zoning.

Mr. Haza said recently, Metro PCS signed a lease contingent upon City approval to occupy that space. Metro PCS is a retail cell phone provider. He said they aren't a high impact tenant and they have 3 more parking spaces than required by code. Mr. Haza said the space has been vacant since 2006 and they felt Metro PCS would be a good fit.

Mr. McCampbell closed the Public Hearing on Appeal #13-49.

Mr. McCampbell asked Mr. Haza if he had reviewed Staff's conditions of approval. Mr. Haza said yes, they were explained to them years ago and they are all acceptable.

#### **Staff Recommendation**

*The Staff recommends in favor of Appeal #13-49 allowing a three tenant commercial building in a C-1 General Commercial zoned property subject to the following conditions:*

1. *Third tenant use shall be limited to general retail or office use.*
2. *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 at a commercial intersection 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:** Ross Portolese moved to forward Appeal #13-50 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 5-0.

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**APPEAL #13-50** An appeal submitted by South Bend Hebrew Day School Inc. requesting a Developmental Variance for **206 West Eighth Street** to allow a 6' chain link fence with a 0' front setback.

Yehuda Seligson, 2627 York Road, South Bend, appeared on behalf of South Bend Hebrew Day School. Mr. Seligson said they recently completed construction on an expansion of the school. He also said they have a fence that encloses the northern portion of the building on Spring/Mill/7<sup>th</sup> Streets and they want to extend the fence further south an additional 80' to include the expansion. Mr. Seligson said that would allow those exiting the building to be within the safety of the fence. It would also provide additional play area for the students.

### **Opposition**

Butch Boyer, 210 W. 7<sup>th</sup> Street, said if they would run the fence along the other side of the fencing to the door, it wouldn't be an eyesore. He said most of the kids are dropped off and picked up in the back near the gym which is enclosed.

Mr. Boyer said he wanted to put up a 6' fence and was told no because of the 25' front setback requirement.

Mr. Boyer said his concern was the maintenance of the fence. The existing fence has been there for years and it's dilapidated and unsightly. He said if it would be kept up and maintained, that's good. Mr. Boyer said he wasn't picking on the kids because he does things for the school; he's just not in favor of putting a 6' fence that close to the sidewalk.

Mr. Boyer also said that since they built the addition, they put up a big floodlight and it bothers some neighbors.

Mr. Boyer said traffic is an issue during pick up and drop off as cars line the streets all the way around.

Mr. Boyer said if the fence was going to be kept up, that's fine. He was told he couldn't do it. He doesn't think they need another 6' fence and he's afraid if it's allowed, it will go all along 8<sup>th</sup> Street.

Mr. Krueger asked if he was aware he could have asked for a variance. Mr. Boyer said yes, but felt it wasn't worth the hassle.

Mr. Krueger asked Mr. Boyer if the existing fence was in poor shape. Mr. Boyer said yes, there are probably 3-4 poles that are bent near where the grass and parking section meet.

### **Rebuttal**

Mr. Seligson apologized to Mr. Boyer for the issues he was having. He said the most important point he wanted to discuss was the actual drop off inside the fence. Mr. Seligson said the school is set up where the older students are separated from the younger students. The students occupying the new facility exit the nearest door. Mr. Seligson said drop off and dismissal happens at the gym door because that's the best way to quickly get students in and out of the building and they determined traffic wise, it was the best way to make it happen.

Mr. Seligson said regarding the floodlights, they wanted to provide their property with as much safety as possible. He said one neighbor did approach the school and they did work with them. Mr. Seligson said they are happy to work with anyone who informs them of issues.

Mr. Portolese said Mr. Boyer's biggest complaint seemed to be the fence posts. Mr. Seligson said some fencing is original to the building, it's true. He said they will do what they can to make the fence right.

Mr. McCampbell closed the Public Hearing on Appeal #13-50.

### **Staff Recommendation**

*Staff recommends **approval** of Appeal #13-50 to allow the installation of an additional 80' of 6' chain link fencing with a 0' front 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 6' chain link fencing is already installed on other portions of their 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 new fence simply extends the existing fence; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because it would not allow the school to fence in the remainder of the property making the most use of the area for parking and safe play for students.*

**MOTION:** Ross Portolese moved to approve Appeal #13-50. Charles Trippel seconded; motion carried with a vote of 4-1 (*Krueger*).

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**APPEAL #13-51** An appeal submitted by Randy Ellsworth requesting a Developmental Variance for **525 Eisenhower Drive** to allow an oversized garage.

Randy Ellsworth, 525 Eisenhower Drive, presented the appeal. He said he would like to build a large garage to get his vehicles out of the yard. He said he has owned the property for over 31 years and have never had a garage and would now like to park indoors. Mr. Ellsworth said he pays for storage for a pick-up truck and would like to have all 5 vehicles together.

Mc. McCampbell closed the Public Hearing on Appeal #13-51.

**Staff Recommendation**

The Staff recommends **approval** of Appeal #13-51 to construct a 1,500 sqft detached garage. 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 large enough to accommodate a large garage without crowding the property; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because while the Appellant could build several 720 sqft structures on his large lot it is more practical to build one large structure to accommodate his vehicles and personal items.*

**MOTION:** Charles Trippel moved to approve Appeal #13-51. Ross Portolese seconded; motion carried with a vote of 5-0.

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**ADJOURNMENT:** 6:32 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner