

MAY 13, 2014

**BOARD OF ZONING APPEALS
MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, May 13, 2014, 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, and Rosemary Klaer. Absent: Ross Portolese. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Peg Strantz, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the April 8, 2014, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #14-05 An appeal submitted by Kevin J. and Paula L. Snyder requesting a Developmental Variance for **2529 Ewing Avenue** to allow a 2,300 sqft garage.

Kevin Snyder, 2529 Ewing, presented the appeal. He said he wants to add on to an existing garage. The back part of the garage is 900 sqft and he wants to add 1,400 sqft on to the front to store his antique and classic cars. Mr. Snyder said the existing garage is cinder block and it's not feasible to fix it.

Mr. Snyder said he doesn't foresee it being a problem for his neighbors as the garage sits far back on his property and he has over an acre. He said it will have metal siding, metal roof, and color will coordinate with the house and will landscape when complete.

Mr. Krueger asked if the structure behind the garage is part of your property. Mr. Snyder said yes, it's a 16' X 20' garage.

In Favor

Margie Griffith, 2423 Ewing, said her concern was that it was being built for a business. But since it's for personal use and going to be kept up, she said she's fine with it.

Mr. McCampbell closed the Public Hearing on Appeal #14-05.

Mr. Krueger asked Mr. Prince if there's a business on the property. Mr. Prince said no, as far as we know.

Staff Recommendation

*The Staff recommends **approval** of Appeal #14-05 to construct a 1,400 sqft addition on to a 900 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 #14-05. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #14-06 An appeal submitted by Teachers Credit Union and Hameln III LLC requesting Use and Developmental Variances for **1110 South Ironwood Drive** to allow an automotive sales lot on C-7 Automobile Oriented Restaurant Commercial zoned property and various pavement, building setback, and landscaping variances.

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Petitioners. He said they originally submitted a request for several developmental variances, but was advised by Planning staff that the non-conformities could remain.

Mr. Ballard said the existing site has been an auto sales lot and a Use Variance for the car lot was approved in 2010 and was to extend a period of 3 years. He said the Appellants want to continue to use the property as approved in 2010, but not be limited to a specific length of time. The property was improved with landscape and buffer and has been maintained over the last 6 years and fits into the neighborhood. There have been no complaints and it is the intent of the contingent purchaser to uphold the current conditions.

Mr. Prince said they talked last week and provided the recommendation that it be granted for 3 years like the previous variance.

Mr. Prince asked Mr. Ballard if he had any information on the contingent purchaser. Mr. Ballard said it was irrelevant to the issue. Mr. Prince said it was relevant as this property is about half the size of a regular car lot, and the request for the variances identifies it as such.

Joe Grabill, 202 Lincolnway East, Mishawaka, appeared on behalf of Hamelin, LLC. He said the contingent purchaser is the existing renter of the property. He said the issue is that if the variance is approved for only the three-year period, then the purchaser is unable to obtain financing; hence the need for it to be permanent so it can become an owner-occupied property.

Mr. Prince said staff would recommend removing the three-year time limit as the current operator has kept the property up.

Mr. Krueger asked Mr. Prince if he was changing the recommendation. Mr. Prince said not changing it, just removing the three-year time limit.

Mr. McCampbell closed the Public Hearing on Appeal #14-06.

Staff Recommendation

The Staff recommends approval of Appeal 14-06 to continue to operate a used car sales lot at 1110 S. Ironwood Drive limited to a time period not to exceed three years (June 2017), at which time it would be necessary for the property owner to file a request to continue the auto sales lot use. 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 historical use of the property had been a gas station. A variety of commercial businesses have been developed on Ironwood drive south of Ewing in both the City of Mishawaka and the City of South Bend;*
- 3. The need for the variance arises from some condition peculiar to the property involved because the zoning allows for an auto related commercial use such as a drive-through/ drive-in restaurant, but prohibits an auto sales lot;*
- 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 for the property permits auto oriented drive through restaurants but exempts auto sales; and*
- 5. The approval is consistent with the recommendations of the Comprehensive Plan for Commercial development at the northeast corner of the intersection of Ironwood Drive and Ewing.*

MOTION: Charles Krueger moved to forward Appeal #14-06 to the Common Council with a favorable recommendation subject to removal of the three (3) year time limit. Rosemary Klaer seconded; motion carried with a vote of 4-0.

APPEAL #14-07 An appeal submitted by Bendan Properties requesting a Sign Variance for **530 West McKinley Avenue (Burger King)** to allow a non-conforming wall sign.

Mike Longley, Quality Dining, 4220 Edison Lakes Parkway, Mishawaka, said he was asking for approval of a non-conforming wall sign. He said the sign is key to the Burger King brand and is actually a requirement of the re-imaging of this location.

Mr. Longley said there was a gap in their interpretation of what was allowed and he's hopeful the Board will approve the sign. He said the sign does not impact the surrounding businesses and it's merely a tagline that Burger King requires.

Mr. McCampbell asked if all of the Burger King locations will be changing. Mr. Longley said yes, they are in the process of updating all of their stores and will take about two more years to complete.

Mr. Krueger asked if the sign had been installed. Mr. Longley said yes, and he appreciates Planning staff working with them.

Mr. Prince said he apologized it was missed last time.

Mr. McCampbell closed the Public Hearing on Appeal #14-07.

Staff Recommendation

The Staff recommends approval of the "HOME OF THE WHOPPER" sign that will sit on top of the entrance canopy at 530 West McKinley as submitted. 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, and will be professionally installed with quality materials;*
- 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, is aesthetically pleasing, 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 canopy signage.*

MOTION: Rosemary Klaer moved to approve Appeal #14-07. Charles Krueger seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:18 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner