

OCTOBER 14, 2014

**BOARD OF ZONING APPEALS
MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, October 14, 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, Ross Portolese, and Rosemary Klaer.

Mr. McCampbell explained the Rules of Procedure.

Mr. Minutes of the September 9, 2014, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #14-22 An appeal submitted by Penn Harris Madison School Corporation requesting a Developmental Variance at **3205 North Home Street** to allow a 150' dispatch tower.

Mike Seger, Director of Safety for PHM Schools, 14569 Old Farm Road, Granger, presented the request. He said the existing tower has been in existence for 30 years and is located at the high school, which used to serve as the transportation center. He also said it's strictly a radio frequency and is used to communicate with the busses. Mr. Seger said this tower would remain and be used as back up if necessary.

Mr. Seger said they have two other towers in the system; one at Grissom Middle School and one at Madison Elementary. He said the plan is to move the tower located at Grissom to the transportation center where it would be more centrally located within the district.

Mr. Seger said they are working with High Tech SMR who will be doing the work; they are just awaiting approval.

Mr. McCampbell closed the Public Hearing on Appeal #14-22.

Staff Recommendation:

*Staff recommends **approval** of Appeal 14-22 to allow the construction of a 150' high school communication tower. 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 area has already been developed with industrial uses including a higher cell tower located off of Mick Ct;*

- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because tower construction was regulated in the zoning ordinance as only being permitted within a heavy industrial district as a conditional use. The ordinance did not address the unique situations associated with this property including the surrounding industrial development, the separation distance from single family residences, and the inherent need of community school corporations.*

MOTION: Charles Trippel moved to approve Appeal #14-22. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #14-23 An appeal submitted by DM Land SB LLC requesting various Developmental Variances at **2340 Schumacher Drive** for landscaping, pavement setback, and required fencing.

Mike Danch, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellants. He said Michiana Chrysler dealership has purchased two additional properties; one being an old industrial site that is to be used as their detail shop. They also purchased the northwest corner of Main and McKinley which will be used to display vehicles.

Mr. Danch said the variances are needed because they are individual parcels. Chrysler is in negotiations with the dealership to purchase the building and by 2017 will own all the parcels.

Mr. Danch said on Schumacher they will put trees all along the street, but are asking for relief for landscaping along the north and south sides where cars will be moved back and forth. They are going to leave the grassy area.

Mr. Danch said on the east side they are abutting residential and staff wanted to make sure that area is well-screened and they will use the existing fence and leave the trees and scrub vegetation that will also create a buffer zone. He said they will do a small 2' mound with trees on top. He said they need relief of providing trees every 6' because they are keeping the fence.

Mr. Danch said on Main and McKinley they are asking for relief from landscaping and is proposing providing landscape and evergreen screen along the north property line near the residential home. He said they also talked with staff and will put in the required trees along Main and McKinley. He said the display lot is not the same as a retail lot and thus asking for relief from landscaping there.

Also, Mr. Danch said they are withdrawing the request to have less setback along Main and McKinley. He said they will work with Planning and Engineering to allow the owner some flexibility to put in pavement for cross access.

Mr. McCampbell asked if the retention pond, shown on the overhead, will go the entire length of the trees. Mr. Danch said it will be 1-2' deep at most.

Mr. Trippel asked who owns the property where the dealership is located. Mr. Danch said the actual owners of the two pieces of land are DM Land and they own the land on Schumacher and the northwest corner of Main and McKinley. The dealership is owned by Gurley and they are leasing it. Mr. Danch said they are committed to owning the building by 2017.

Mr. Trippel asked what happens if they back out. Mr. Danch said it won't happen. Mr. Prince said they have a lease purchase agreement and the deal was set up that way. It's a separate ownership until 2017.

Mr. Trippel asked as far as the City is concerned, it's irrelevant. Mr. Prince said that's how it was reviewed. There will be no curb cut on Main Street as was part of the plat. He said if the deal didn't go through, they would have spent hundreds of thousands of dollars for property that has no access; we feel confident they'll go through with it.

Mr. Danch said staff has asked for additional landscaping at the entrances and the Appellants have agreed.

Mr. Portolese asked how deep the swale would be. Mr. Danch said 1-2' if they have it. He said the reason they showed it is they thought they would end up draining the lot at Main and McKinley. Since that time, they found that Mishawaka has a 54" sewer line and they won't be able to do that; they'll do a French drain or maybe just have a grass area.

Opposition

Judi Dahlgren, 2333 N. Main Street, said she lives across from the fire station and is the first home north of the car lot's property. She said she put up a snow fence to keep the dealership from using her driveway as an entrance. She said there's a parcel of land that she's been negotiating with the City to purchase and she said she talked to George Obren in Code Enforcement and was told the plan had changed and the City would maintain a 60' lot south of the 40' she's requesting. She was told the fire station may move the house immediately to the north of it if they were to expand their building.

Ms. Dahlgren said none of the car dealership stuff should be going on within 100' of her property. She said there's a sewer line that runs parallel to the south end of her property with lots of draining things and she doesn't know where drains will be. The property in question goes behind eight of their homes along Main Street and now there's going to be a 2' pond behind the eight houses? How wide will it be? She said she wants to know what's going to be going on behind her home.

Ms. Dahlgren said she's also concerned about the noise. She said the dealership has deliveries at 3:00 a.m. The neighbors can't have their windows open.

Mr. Prince read letters of remonstrance from Brandy and Shawn Thornton at 2343 N. Main Street and Brandon Holt at 2339 N. Main Street, all of whom had concerns about music and late night noise.

Rebuttal

Mr. Danch said there is a lot between Ms. Dahlgren's house and the display lot that was included in the subdivision in case the house to the north of the fire station needed to be moved.

Mr. Danch said the sewer line created a storm sewer easement that goes through a portion of that lot. He said Ms. Dahlgren has expressed interest in purchasing additional property and they created a larger lot for her during the subdivision process. Mr. Danch said it's his understanding she just needs to sign a quit claim deed and she'll have the lot.

Mr. Danch said there will be no retention pond behind her home, more than likely a swale, but it must deal with surface run-off. He said the good thing is all soils are sandy and the

water will probably drain out quickly. He also said there will be extensive landscaping between the two lots.

Mr. Danch said he was not aware of any noise issue or late deliveries until this evening and will certainly bring it up to the owner. They shouldn't be having noise or loud music going on during the night. He's sure there are ordinances for such things.

Mr. Danch said he will speak with Ms. Dahlgren after the meeting so she understands everything that is going on.

Mr. McCampbell closed the Public Hearing on Appeal #14-23.

Mr. Krueger said as he understands it, Ms. Dahlgren will acquire the 40' parcel south of her home. Mr. Prince said Mr. West and Mr. Thomas are dealing with it.

Mr. Trippel said he suggested the item be continued to next month because he isn't ready to vote yes right now. He said he doesn't want to vote yes if it's going to upset the neighbors. Mr. Prince said the City has a noise ordinance and he is also just now hearing about the noise problem and isn't sure what deliveries they are referring to.

Mr. Prince said regarding what the Board is considering; the applicant came to rezone the Indiana Wiping Cloth property, which was zoned industrial, to auto related. This is to modify the landscape ordinance. He said if you deny the variance, they could essentially tear down every tree on the lot and the owner is working with us. Mr. Prince said he personally thinks it's a good project and understand there's been another hearing on the rezoning of the property. This is a follow-thru on the previous meeting.

Mr. Krueger asked if Ms. Dahlgren's property is part of a homeowner's association. Mr. Prince said no.

Staff Recommendation:

The Planning Department recommends approval of the aforementioned developmental variances for appeal 14-23. This recommendation is based on the following finding of fact:

- 1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because the projects proposed will improve the property. The developmental variances requested are largely based on working the development into the existing conditions.*
- 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 particular emphasis is being placed on retaining existing vegetation where applicable.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the development includes three properties and only the two being requested are under common ownership resulting in a need to address temporary conditions. In addition, the resulting improvements proposed meet or exceed standards approved for other similar auto developments that have occurred in recent years.*

MOTION: Ross Portolese moved to approve Appeal #14-23. Rosemary Klaer seconded; motion carried with a vote of 3-2 (Krueger, Trippel).

NEW BUSINESS:

Mr. Prince said we need to change November's meeting from Tuesday the 11th to Wednesday the 12th due to City Hall being closed for Veteran's Day (November 11). The Board moved and approved.

ADJOURNMENT: 6:39 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner