

NOVEMBER 12, 2014
BOARD OF ZONING APPEALS
MISHAWAKA, INDIANA

A regular meeting of the Mishawaka Board of Zoning Appeals was held Wednesday, November 12, 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 Ross Portolese. Absent: 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 October 14, 2014, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #14-24 An appeal submitted by Clifford and Lisa Walters requesting a Developmental Variance for **452 Ballard Avenue** to permit a handicap accessible ramp with a 17' 3" front yard setback.

Lisa Walters, 452 Ballard Avenue, presented the appeal. She said they have to have the ramp built because her ex-husband, who lives with her, lost both legs due to diabetes.

In favor

John Chenoweth, 509 Ballard Avenue, said he is in support of this. He said the church that built the ramp did a good job and it's needed for Mr. Walters to be able to get in and out of his house. Mr. Chenoweth said it's an excellent thing and doesn't hurt the neighborhood one bit.

Mr. McCampbell closed the Public Hearing on Appeal #14-25.

Staff Recommendation

Staff recommends **approval** of Appeal 14-24 to allow an access ramp to be constructed with a 17' 3" front 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 is modest in size and will not be a visual detraction from adjacent property and be at least 20-feet from the public sidewalk; and

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: Ross Portolese moved to approve Appeal #14-24. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #14-25 An appeal submitted by Epic Church requesting a Sign Variance for **3524 Harrison Road** to permit an additional monument sign.

Brian Steffen, Premiere Signs, 400 N. Main Street, Goshen, IN, appeared on behalf of the Appellant. Mr. Steffen said his company will be supplying the sign for this location. He said the driveway is far enough away from the existing sign and it needs identification.

Mr. Krueger asked if it will be lit by lights on the ground. Mr. Steffen said yes.

Mr. Prince read a letter of support from R. and K. Schultz, 1109 Warrington Court.

Staff Recommendation

*Staff recommends **approval** of Appeal 14-25 to allow a second monument sign to be installed at the new entrance on Oakside Road. 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 parcel is 7.6 acres in size and the new sign will be located more than 400' from the existing sign; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance permits only one sign for places of worship and has no provision to accommodate a large parcel where identification of a second entrance is needed.*

MOTION: Charles Trippel moved to approve Appeal #14-25. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #14-26 An appeal submitted by Lincoln and Susan LeHue requesting a Use Variance for **1915 North Cedar Street** to permit an auto body shop, auto repair, and detailing on I-1 Light Industrial zoned property.

Mike and Susan LeHue, 55981 Wynnewood Drive, South Bend, appeared on behalf of the request. Mr. LeHue said he's had trouble leasing space in the building and has had a lot of inquiries for auto detailing. Mr. LeHue said they keep their property in good shape.

Mr. Krueger asked if it was leased. Mr. LeHue said yes, but didn't realize it wasn't zoned for the use.

Susan LeHue said they didn't realize an auto shop couldn't be there, although it's been there quite a while. That's why they are asking for the variance.

Mr. Krueger asked how long they have been there. Mr. LeHue said a couple of months, but they've had quite a few auto body shops there. He also said there were different ones there even before they bought the building.

Mr. McCampbell asked the LeHue's if they had read the Conditions of Approval and did they go along with them regarding the outside storage of vehicles. Mrs. LeHue said she doesn't want anything sitting on the lot; wants it kept nice looking. She also said she keeps an eye on the lot and won't let anyone work on their cars in the parking lot.

Mr. McCampbell said the day he drove by there were about 10 cars in the lot. Mrs. LeHue said there are 5 bays rented and several people working in each bay and the cars they are working on.

Mr. Krueger said it looked like there was a storage shed on the lot. Mrs. LeHue said it's used to store flammable items.

Mr. Krueger said the staff report said there was to be no outside storage. Mrs. LeHue said the shed was there when they purchased the property, but can remove if necessary. They keep flammable materials in there for their tool and die business.

Mr. Prince clarified that storage buildings are encouraged to keep items from being stored outside.

Mr. Trippel asked Mrs. LeHue how long they have owned the property. Mrs. LeHue said since 2000.

Opposition

Jan Winn, 1913 Margaret Avenue, said she lives directly across the street. She said she's all for small business, but with small business comes responsibility. Mrs. Winn said they have put up with tire screeching late at night, music blaring, window shaking, and have had early morning pounding on cars.

Mrs. Winn said tonight they find out there are several different businesses in the building already, so she doesn't know who is doing it. She said she was hoping the owner would maintain and have regular hours. Mrs. Winn said she should be able to sit outside and not have cars screeching at 11:30 at night.

Jeff and Melissa Wisler, 1905 Margaret, said he also lives across the street. He passed around pictures he took on November 8 and they also provided a petition signed by many in the neighborhood who have lived on and are living on Merrifield and Margaret who are opposed to this request.

Mr. Wisler said he has lived in the neighborhood for 18 years and is not opposed to small business; he is in business as well. But he said this last summer has been difficult living in their neighborhood with the screaming tires, vibrating windows, thumping, they've had to turn up the TV and close their doors. They can't enjoy the weather or their back yard.

Mr. Wisler said it got to the point in October where they had to call the police due to the noise. He said his wife wanted him to do earlier, but they tried to be good neighbors and let

them do their business, but they have no set hours. They are partying or having music at all hours, even 5:00 a.m.

Melissa Wisler said one morning at 5:00 a.m. they awoke to hammering so loudly they thought someone was trying to break into their shed, but it had come from across the street and continued on for another 30 minutes. She said it seems to be more of a hangout in the late evening or early morning hours.

Mr. McCampbell asked if it was ok up until this year. Mrs. Wisler said yes, until the spring.

Mr. Wisler said being on Cedar Street you get street noise and it comes and goes, but nothing like this. He said the owners don't seem to be keeping an eye on the property.

Christine Hall, 1822 Margaret, said she lives across the street from the Wisler's. She said there is a barrier of houses between her house and the business and it's like it's her front yard. Ms. Hall said she's lived there 25 years and in that time there has never been an issue of this kind until this summer. She said the music is so loud it vibrates her windows. Last week she looked at her clock and it was 12:20 a.m. and there was tire squealing, music blasting.

Ms. Hall said she's in opposition to this request as it's disturbing their peace.

John Kowalski, 1812 Margaret, lives next door and diagonally across from the property. He said he owns motorcycles and is a motor enthusiast and there's a time and place for everything, but the businesses on Cedar Street are not a playground.

Mr. Kowalski said if the owners can't manage the property and if it's already on the books there's an unapproved business operating there, then he would rather not seem them in there. He said the noise from the machining business does not infringe upon the neighborhood; these are not respectable neighbors.

Mr. Prince noted a letter of remonstrance was received from Mr. and Mrs. Wisler, but did not read as they appeared at the meeting.

Mr. Prince said he would recommend continuing the item and let the owner work out addressing the issues with the neighbors as he isn't sure they were aware of the problems. He said if you vote against it, it would preclude any body shop from going in there.

Rebuttal

Mrs. LeHue said she would like a chance to talk to the tenant and that the tenant was supposed to be at the meeting tonight, but is not. She said they were not aware of all this going on as they live in Osceola.

Mrs. LeHue said she apologizes for this as she didn't know this was going on. The tenant is on a month-to-month basis and she will definitely let them know it's unacceptable and they'll have to go if they don't change.

Mr. LeHue also apologized to the neighbors. He said he wasn't aware all this was going on as it doesn't happen while they are there.

Mr. McCampbell closed the Public Hearing on Appeal #14-26.

Mr. Krueger said he would suggest they consider postponing until December so they can work things out with the staff.

Mr. Trippel said if they turn this down, the recourse for the neighbors is they aren't going to have an auto body shop there.

Mr. Trippel asked how long it will take to be rectified. Mr. Prince said a matter of months, but ultimately if the Board denies it he would work with the owners to work out an exit strategy. He said he thinks it would be beneficial to continue.

Mr. Portolese said Mrs. LeHue said she would kick the tenants out; let her kick them out.

Mr. Prince said the issue is they are working to rectify the zoning violation. It's the Board's discretion to continue; the petitioner can only continue twice.

Mr. Prince also said there is a very narrow scope they can consider. He said he prefers the owner take whatever action necessary to rectify the situation. It could be a letter or whatever. He also said the Board has the ability to place reasonable conditions upon the request, like hours. Mr. Prince also said the Board has entire discretion to move this rather than let us interject. Put the onus on the owner and let them show the issue has been addressed.

Staff Recommendation

The Staff recommends in favor of Appeal 14-26, a use variance for automotive body shop, auto shop, and auto detailing uses at 1915 N Cedar Street, subject to the following conditions:

- 1. Use variance shall be limited to automotive body shop, auto shop, and auto detailing and shall be limited to indoors. No outside storage of inoperable vehicles, materials and/or vehicle parts will be permitted;*
- 2. A site plan shall be submitted to the Department of City Planning showing proposed parking layout in regards provided parking space per use.*
- 3. Temporary signage is prohibited.*

This 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 proposed use will have no impact on the adjacent industrial uses that currently operate there. The proposed use is consistent with the existing industrial properties within the area.*
- 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 of the industrial nature of the area along Cedar Street.*
- 3. The need for a variance arises from the nature of the area, where property owners are very protective of the intensive zonings of their properties. A use variance would allow the proposed automobile commercial use, while still protecting the industrial zoning for future use and also protecting the residential users to the north and south.*
- 4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current I-1 light Industrial zoning would not allow for the proposed automobile oriented commercial uses.*

5. *The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies other surrounding areas as industrial. The approval is consistent with the goals and objectives of the Comprehensive Plan given the existing auto commercial uses that are located to the south of this property along Cedar Street.*

MOTION: Charles Krueger moved to continue Appeal #14-26 to the December 9, 2014, public hearing. Charles Trippel seconded; motion carried with a vote of 3-1 (Portolese).

Mr. Prince asked everyone to keep Rosie in their prayers as she has a serious illness.

ADJOURNMENT: 6:30 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner