

DECEMBER 9, 2014

**BOARD OF ZONING APPEALS
MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, December 9, 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, and Don McCampbell. Absent: Ross Portolese. In addition to members of the public, the following were also in attendance: Ken Prince, Greg Shearon, Christa Hill, and Kari Myers.

Charles Trippel moved to adopt the 2015 Rules of Procedure and 2015 meeting calendar. Charles Krueger seconded; motion carried with a vote of 3-0.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the November 12, 2014, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

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.
Continued from the November 12, 2014, meeting.

Susan and Lincoln LeHue, 55981 Wynnewood Dr., Osceola, appeared. Mrs. LeHue said she brought the renters.

Mrs. LeHue said after the last meeting, someone pulled up to the renters and said they were watching them. She also said the police were called due to a loud car and when they arrived the renters told the police the cars didn't run. Mrs. LeHue said no report was taken as there were no cars running.

Mrs. LeHue said people are coming into their parking lot and are sitting in their cars looking. She said it's their personal property and those people didn't have the right to do that. She said that not all noises are coming from their property, but they are being blamed for them.

Christine Nawracki said she runs the body shop office. She said they have made great strides to be good neighbors, doing good for the community. They have adjusted their hours and no longer do major work after dark. Ms. Nawracki said they are trying to provide good services. They don't have social gatherings at their shop and she noted they are not the only auto shop on Cedar Street.

Opposition

Murray Winn, 1913 Margaret, said he lives directly across Cedar Street from the parking lot. He said he isn't sure who's there at midnight opening doors. He said car haulers come in as late as 11:00 to 12:00 p.m.

Mr. Winn also said as the weather has gotten colder, the doors are closed so there's not as much noise. He said cars come in and out until midnight. He also said the parking lot does not have lights and it isn't uncommon for cars to use their headlights so cars can be worked on. Mr. Winn said he isn't sure if others are coming in to do work from other body shops.

Melissa Wisler, 1905 Margaret, said she isn't implicating this business as causing all the problems; it may not be these people. She said they did stop in the parking lot after the last meeting to check on the cars, but nothing was said to anyone.

Mrs. Wisler said she showed pictures at the last meeting of the tire marks in the parking lot and she isn't sure who is doing it. She said they called the police at 2:40 a.m. after the last meeting because of a car with dual exhaust running.

Mrs. Wisler also mentioned the petition that was provided to the Board at the last meeting of the neighbors that were unhappy with the body shop and that the entire neighborhood has been impacted.

Mr. McCampbell reminded Mrs. Wisler said this is a Use Variance and that the Common Council will make the final determination.

Mr. Wisler asked if this changes the property zoning. Mr. Prince said in essence, yes.

Mr. Wisler said that 16 residences face this business. He asked the Board not to give it a favorable vote as it isn't fair to the folks that have lived in the neighborhood for 25 years.

Dave Price, 1903 N. Merrifield, said his windows face Mr. Winn's home. He said several times he has seen cars in the parking lot and heard squealing tires. He said they what they do is take Cedar Street to Merrifield, then Merrifield to Jefferson and back to Cedar Street into the parking lot. He said they gun it all the way to Jefferson. Mr. Price said this never happened before.

Rebuttal

Mrs. LeHue said the neighbors have said it wasn't like this when LeHue Machining was there; LeHue Machining has always been there. People have been there all day and all night. Other businesses have been in the building. Mrs. LeHue said she knows for a fact the body shop has been more cognizant of the neighbors and they have encouraged the neighbors to call the police when there is a problem. She asked that they not be punished for having one bad renter. She said going back to 2000 when they bought the building, they haven't had any problems.

Mr. Prince said the difficulty is the legal test. Will the use and value of adjacent properties be affected in an adverse manner? It has been demonstrated that it has been detrimental to the neighborhood and the onus is on the property owner to make it right.

Mr. Prince said when the building was developed; there were standards that the lot be lit. Mrs. LeHue said the lot is well-lit.

Mr. Prince said his point is there are things the owner can do to limit the impact on the neighbors and doesn't know what the Board would be willing to consider; it's something to work with the tenant on.

Mr. Trippel told Mrs. LeHue they had 30 days to make it right and now it's up to the Common Council to make the final determination.

Mrs. LeHue said if you asked the neighbors about the noises this month vs. last month they would said it's gone down. She said they are aware of the problem and she said the tenants were told if they don't make improvements, they would be asked to leave the building. Mrs. LeHue said she thought just telling the tenants would be enough.

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

Mr. Krueger said it's confusing as to what they need to make a judgment on. What they are asking is for a change in the variance, and we can't do that. We've heard from the neighbors and we don't know if it's coming from them or orders.

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 Trippel moved to forward Appeal #14-26 to the Common Council with an unfavorable recommendation. Mr. McCampbell seconded. Mr. Krueger voted no. The Appeal goes to the Common Council with no recommendation as there were not three (3) votes for the motion.

APPEAL #14-27 An appeal submitted by JRC Corporation requesting a Use Variance for **428 South Byrkit Avenue** to allow an auto body and auto paint shop

Romulo Merino, 1901 E. Donald Street, South Bend, spoke on behalf of Raymundo Lopez, the Appellant. Mr. Lopez was also in attendance. Mr. Merino said Mr. Lopez is requesting the Use Variance to have a paint and body shop at the address.

Mr. Trippel asked how long it's been used as a body shop. Mr. Merino said it wasn't aware of it being used as a body shop before and when Mr. Lopez rented the building he started doing research into licenses and such to see if the use was proper for the area. He said it's a brand new business and the Planning staff recommended the Use Variance.

Mr. Krueger asked Mr. Lopez if he was aware of the five conditions of approval. Mr. Merino said yes, they were aware and said they had a few questions. Condition #5 states they are required to have a grease interceptor and is that required if they were going to fix vehicles; are they required to do that for a body shop? Mr. Prince said they would need to pose that question to Engineering as that's a standard requirement for repair. He said in order for that condition to be removed, it would need to come from Engineering.

Mr. Merino also said they weren't sure about condition #3, temporary signage. Mr. Prince said temporary signs are not permitted; the kind that push into the ground and such. Also no giant banners on the building, but can put a permanent sign on the wall. Mr. Prince said there was a sign from the previous business, so that shouldn't be an issue.

Mr. Merino said Mr. Lopez is working on the paint booth requirements. He has purchased the paint booth and has contacted the Fire Department so they can come out and inspect.

Opposition

Steve Peterson, Starboard Marine, 504 S. Byrkit, said he isn't against the body shop; he loves small businesses and wants them to flourish. He did, however, want to bring some things to the Board's attention, mostly that there are a lot of requirements to be met regarding sound, dust, EPA requirements.

Mr. Peterson said he doesn't want to see cars outside needing work. He said most body shops have a fenced-in area where you can't see the cars and he would like to see that.

Mr. Peterson said if he moves to his building and has a storefront to sell new boats, he doesn't need a body shop with doors open and dust flying out along with the smells. He said he wants them to have their doors shut during the day when work is being done.

Mr. Peterson said the paint booth must also meet the fire code. Body shops that have a paint room need fresh air in and fresh air out; sniffers need to be in there and they also have to have a sprinkler system.

Mr. Peterson said he's concerned about overspray. If there's overspray coming out of the building he's going to be upset. He also said you have to record all the chemicals that you buy and someone comes in and weighs everything and you can get fined if you don't account for everything.

Mr. Peterson said he would like to see lighting in front of the building and doesn't want Mr. Lopez to hide cars that need work between the buildings.

Mr. Peterson said he wants Mr. Lopez to succeed, but wants it done the right way.

Rebuttal

Mr. Merino said it's Mr. Lopez's intention to follow up on what needs to be done in order to run a good business and he's working on the requirements before he runs his business.

Mr. McCampbell closed the Public Hearing.

Staff Recommendation:

The Staff recommends in favor of Appeal 14-27, a use variance for automotive body shop and auto painting uses at 428 S Byrkit Street, subject to the following conditions:

- 1. Use variance shall be limited to automotive body shop and auto painting uses 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;*
- 4. The paint booth shall meet all requirements of the Fire Department for such a use; and*
- 5. The Engineering Department requires an oil/grit interceptor for all floor drains or hand wash basins due to the automotive use.*

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 Byrkit 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.*
- 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-2 Heavy 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.*

MOTION: Charles Trippel moved to forward Appeal #14-27 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 3-0.

Mr. Prince introduced Christa Hill, new associate planner who started on November 17.

Mr. Prince also acknowledged the passing of long-time BZA and Plan Commission member Rosemary Klaer. He said Mayor Wood would be appointing a replacement soon.

ADJOURNMENT: 6:40 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner