

MARCH 10, 2015

**BOARD OF ZONING APPEALS
MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, March 10, 2015, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Ross Portolese, Don McCampbell, and Marcia Wells. Absent: Charles Krueger and Charles Trippel. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Greg, Shearon, Christa Hill, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the February 10, 2015, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #15-09 An appeal submitted by Charles S. Hayes, Inc., (purchaser) on behalf of Saint Pius X Catholic Church (owner) requesting a Use Variance to permit a cell tower on property located west of Tanglewood Trace.

Charles Hayes, President, Charles S. Hayes, Inc., 814 Marietta Street, South Bend, said he is proposing to install a cell phone tower and equipment on a vacant lot east of Grape Road and North of Day. The property is currently owned by St. Pius and they have agreed to purchase a portion for the tower. Mr. Hayes said the property is wooded and unused and would remove as few trees as possible.

Mr. Hayes said the tower would have an overall height of 195' and would not be lit. He said it's being constructed for Verizon in an area that is underserved. There are towers within a several mile radius and this is an important coverage area.

Mr. Hayes said he has spoken with the adjacent neighbors and they have no issues with it. Tanglewood Trace, Golden Living Center, and Joers have no objection to the tower.

Mr. Portolese asked if the tower would be surrounded by trees. Mr. Hayes said yes, the area is fairly dense and they would clear out dead trees and they will grave the area and be surrounded by a chain link. They also have no problem with the paved driveway.

Mr. McCampbell asked Mr. Hayes if he had read all the conditions. Mr. Hayes said yes and had a chance to talk to staff early in the process who suggested they speak to the neighbors.

Mr. McCampbell closed the Public Hearing on Appeal #15-09.

Staff Recommendation

The staff recommends in favor Appeal 15-09 to allow for the installation a 195-foot overall commutations tower and related equipment subject to the following conditions:

- 1) The tower shall not exceed more than 195-feet in height.
- 2) An Administrative Site Plan shall be submitted for the property. The site plan shall be consistent with the general standards identified of the schematic site plan submitted.
- 3) Care shall be taken to preserve a significant number of trees west and south of the proposed tower location. Existing trees to be preserved shall be surveyed and identified on the Administrative site plan and shall be subject to staff review and approval. Placement of the tower may need to be shifted to the east, but should maintain a 5' setback. Existing vegetation shall be supplemented with new evergreen trees depending on the ability to save existing vegetation. Evergreen trees shall be planted in sparse areas and shall not exceed a 15' x 15' triangular spacing with a minimum installed height of 8'.
- 4) The proposed access shall be paved.

This recommendation is based upon the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the property on which the tower is to be located sits far back from the road and at least 200' away from the closest residential building.
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 on which the tower is to be located sits far back from the road and at least 200' away from the closest residential building.
3. The need for a variance arises because the Zoning Ordinance for the City of Mishawaka restricts the installation of cellular communication towers from all zoning districts other than I-2 Heavy Industrial zoned districts. With the increased usage of cell phones, the number of properly zoned parcels in areas needed to provide adequate cell coverage are becoming less available. However, each site needs to be evaluated on an individual basis.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because cell towers are only allowed in industrial zoned properties. The use of cellular phones and technology have rapidly increased in the past few years and created a higher demand for better cellular coverage for users. The location of properties zoned heavy industrial within the City requires that sites be evaluated on a case by case basis relative to the context of a specific location.
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan. Although the Comprehensive Plan identifies this property for low density residential, the Comprehensive will not be substantially interfered with because of the limited use of the property and the specific hardships associated with the request.

MOTION: Ross Portolese moved to forward Appeal #15-09 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 3-0.

APPEAL #15-11

An appeal submitted by Maurice Bokhart (purchaser) on behalf of Thomas W. Mittler Family Trust (owner) requesting a Use Variance for **403 South Main Street** to permit the warehousing, resale, detailing, and rental of high-end, luxury automobiles.

Maurice Bokhart, 16400 Kern Road, Mishawaka, presented the Appeal. He said the property has been utilized for detailing autos and as a showroom for at least a decade. Mr. Mittler wanted the building to be secure and the public was unaware of what was inside.

Mr. Bokhart said Mr. Mittler has passed away and the family is selling the property and it's perfect for his use. He said the light industrial zoning isn't appropriate for auto related uses and he's asking for approval for the warehousing of automobiles. Mr. Bokhart said all autos will be inside and secure. He said staff has allowed outdoor parking of vehicles, but said he has no intention of doing that. Most cars will be sold over the internet.

Mr. Portolese asked Mr. Bokhart if he had read the conditions. Mr. Bokhart said yes, and he has no problem with any of them.

Opposition

Sherry Raven, 122 W. 6th Street, said she lives directly south of the property. She said Mr. Bokhart sent a letter saying it would be used as a warehouse and all cars would be inside. She asked if there was a zoning regulation that the cars have to stay inside or will he one day be able to park them outside.

Mr. McCampbell said it's a Use Variance and staff recommendations and conditions say outdoor parking may be allowed, but Mr. Bokhart has said they would not be parked outside.

Mrs. Raven said if cars are parked outside, she would be in opposition to it. Mr. Mittler took good care of the property and kept the vehicles inside.

Rebuttal

Mr. Bokhart said it's all one tax ID even though there are two buildings and he had to notify all neighbors within 300' feet. There are a modest number of parking spaces and he has to have spaces for employees. He said there will probably only be three employees there at any one time and he has no plans to have the vehicles outside.

Charles Raven, 122 W. 6th Street said his concern is that the neighborhood is bad enough with the catering business, bar, and properties that are not kept up and if he decides to sell his house, it will depreciate his property.

Mr. Bokhart again said he wouldn't have cars outside.

Mr. McCampbell said he understands Mr. Raven's concerns and if Mr. Bokhart will be selling luxury vehicles, he won't want them parked outside.

Staff Recommendation

The Planning Staff recommends approval of Appeal 15-11 to allow in warehousing, resale, detailing, and renting of high-end, luxury automobiles in an I-1 Heavy industrial district subject to the following conditions:

1. *Outdoor parking of vehicles may be allowed. However, vehicles shall be parked only in the existing on-site parking spaces and the required number of parking spaces for industrial use, (1) space per employees at maximum shift, shall be maintained. A site plan shall be submitted showing location of proposed parking.*
2. *A grease/grit interceptor shall be installed per the Department of City Engineering.*
3. *No auto-mechanical and/or auto-body work may be performed on the property.*

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 are zoned for industrial and/or commercial uses.*
3. *The need for the variance arises from some condition peculiar to the property in that it is located in an industrial area and does not allow for the proposed auto use which is more applicable to an industrial property than to a commercial property.*
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 specific automotive uses within industrial zoned properties. The only means by which to allow the proposed car use and maintain the current industrial portion is through the use variance process;*
5. *The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.*

MOTION: Ross Portolese moved to forward Appeal #15-11 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 3-0.

APPEAL #15-12 An appeal submitted by Kai Nielson (leaseholder) on behalf of Bruce Gafill III (Owner) requesting a Use Variance for **1231 Lincolnway West** to permit a collection/distribution center in a C-1 General Commercial District and various Developmental Variances for parking, landscape, and setbacks.

Greg Kil, Kil Architecture/Planning, 1126 Lincolnway East, South Bend, appeared on behalf of Planet Aid. Mr. Kil said that Brian Hinterleiter and Bob Thompson from Planet Aid were also present.

Mr. Kil said the building is a former service station and a pizza parlor 8-10 years ago. He said the proposed use is a clothes donation center. Mr. Kil said the site will be upgraded with landscaping, paint, and will be unheated. The drop-off bins will be placed at the west side of the building and monitored on a regular basis and no items will be left outside of the bins. Mr. Kil said on the north side of the building will be a drop box. Staff will be by several times a day to pick up items.

Mr. Kil said several variances had been requested such as landscaping, reduction in the required number of parking spaces, building and pavement setbacks.

Mr. Kil also indicated no vehicles will be parked at the facility except when items were being picked up.

Mr. Portolese asked what happens to the clothes that are dropped off. Mr. Hinterleiter, Planet Aid, said the donations will support programs location and internationally. He said the clothing is taken to their Cleveland facility sold by Planet Aid. Mr. Hinterleiter said donations come in; they are picked up, and routed to their Cleveland site which is their main distribution center.

Ms. Wells asked if the donations were clothes only. Mr. Hinterleiter said yes, clothing and shoes only.

Mr. McCampbell asked if that will be indicated on the bins. Mr. Hinterleiter said yes.

Mr. Portolese asked if anyone will be at the store. Mr. Hinterleiter said someone locally will be hired to be in the morning and in the afternoon.

Mr. Portolese asked if other locations in the area do this. Mr. Hinterleiter said not in the Mishawaka area; it will be their flagship location. He said they are launching a new donation center and they are doing it from scratch and are looking for feedback from the City.

Mr. Portolese asked what usually happens when people just dump their old mattresses and furniture at the location. Mr. Hinterleiter said a camera will be installed so they can monitor the site. If there is someone who has dropped off large items like that, it will be cleaned up immediately. He also indicated the garage area will allow items such as that to be stored and disposed of if that happens. There will be nothing on the ground outside and will be cleaned up within 24 hours or faster.

Mr. McCampbell closed the Public Hearing on Appeal #15-12.

Mr. Portolese said the bins at Martin's on Bittersweet are often full and he doesn't want that to happen here. He said even City Hall has a Better World Books drop off. Mr. Portolese said these boxes are placed with good intentions.

Mr. Prince said what he likes is that it will be manned on a regular basis and he understands the concern. He said there are not a lot of things this property can be used for with little or no parking. The fact is they are willing to paint the building and add landscaping.

Staff Recommendation

The Planning Staff recommends approval of Appeal 15-12 to allow a use variance for a donation drop-off/collection center. 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 proposed use is less intense than what is allowed under the C-1 General Commercial zoning.*
3. *The need for the variance arises from some condition peculiar to the property in that it is located on a commercial zoned property and the Ordinance does not specify the proposed use as an allowable use in any of the zoning districts.*
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 specific proposed use within commercially zoned properties. The only means by which to allow the proposed use is through the use variance process;*
5. *The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.*

The Planning Department recommends approval of the aforementioned developmental variances for 1231 Lincolnway West. 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 conditions on the property are existing.*
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 site conditions are existing and several site improvements to the property are proposed.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the site is small in size and does not allow for required developmental standards without hindering the functionality of the property for the intended use.*

MOTION: Ross Portolese moved to forward Appeal #15-12 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 3-0.

ADJOURNMENT: 6:26 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner