

**JULY 14, 2015**

**BOARD OF ZONING APPEALS  
MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, July 14, 2015, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Charles Trippel, Ross Portolese, and, and Marcia Wells. Absent: Don McCampbell. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Greg Shearon, Christa Hill, and Kari Myers.

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Mr. Trippel explained the Rules of Procedure.

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Conflict of Interest was not declared.

**PUBLIC HEARING:**

**APPEAL #15-26**

An appeal submitted by Richard and Karen Gerver requesting a Use Variance for **3837 Lincolnway East** to permit residential use in C-1 General Commercial Zoning.

Matt Gerver, son of Richard and Karen Gerver, appeared as well as Richard and Karen Gerver, 222 Roseland Avenue, Mishawaka. He said last year they rezoned the property in order to open a car lot. At that time, they were told if they wanted to rent the house as residential, they would need to get a use variance. Mr. Gerver said they are now asking for the use variance.

Mr. Trippel asked if they wanted to use the house as residential. Mr. Prince said they are doing that and they're doing it via a Use Variance for the residential use in a commercial district instead of rezoning just a portion of the property. We just want to make sure you know they're using the house and residential and the rest of the property for a commercial use.

Mrs. Wells asked if it will be used as a rental property. Mr. Gerver said yes, they won't be living there.

Mr. Portolese asked if they owned the car lot. Mr. Matt Gerver said yes. An employee who works at the car lot will be renting the home.

Mr. Trippel closed the Public Hearing on Appeal #15-26.

**Staff Recommendation**

*The Staff recommends approval of Appeal #15-26 to allow the existing home located on the property to be rented as a single family residence based on the following Findings of Fact:*

*This recommendation is predicated 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 existing structure has been used as a residence and its use will not change;*
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 there are many residential properties in the immediate vicinity and its use is variance would be compatible to its historical residential use;*
3. *The need for the variance arises from some condition peculiar to the property involved in that the home was constructed in 1911 when residential uses were permitted in commercial zoning districts;*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the existing non-conforming situation will continue to exist unless the home is demolished or property split and rezoned accordingly; and*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan identifying the area as General Commercial because the single family home has existed since 1911 when residential uses were permitted in commercial zoning districts and without the variance, the home would sit vacant and possibly fall into disrepair.*

**MOTION:** Ross Portolese moved to forward Appeal #15-26 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-0.

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**APPEAL #15-27** An appeal submitted by Julianne M. Bognar and Tina J. Turner requesting a Developmental Variance for **148 Manchester Drive** to allow a privacy fence with 5' setback on a thru-lot.

Julianne Bognar, 148 Manchester Drive, presented the appeal. She said she wants to put up a fence by the pool because she doesn't want kids jumping over her existing fence. Ms. Bognar also said she has a puppy and kids want to pet it and jump the fence.

Ms. Bognar said it will be 6'. She'll be able to see over the fence from her back door. She also said her neighbors gave their ok.

Ms. Bognar said there are more and more kids in the neighborhood every day and she's concerned for their safety.

Mr. Krueger asked if the swimming pool was in use. Ms. Bognar said it's currently almost empty because it's being refurbished, and the work should be done in about a week or two.

Mr. Krueger asked if she had considered getting a lockable cover. Ms. Bognar said it's almost impossible due to the size and she also doesn't have the money. She also said she thinks the fence would be appealing and wonderful for the neighborhood and doesn't want her dog to bark at what's going on around them.

Mr. Trippel closed the Public Hearing on Appeal #15-27.

Mr. Prince read a Letter of Support from Deena Dipert, 140 Hackberry Court.

**Staff Recommendation**

*The Staff recommends approval of Appeal 15-27 to allow installation of a privacy fence with a 5-ft setback along Hackberry Court on property located at 148 Manchester Drive. 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 clear vision will be maintained for Hackberry Court traffic and all local building codes will be adhered to for the construction of the fence.*
- 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 privacy fence will not hinder views out of driveways from adjacent properties.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellants would only be allowed to erect a fence that is four feet high and 75% open which would not be an appropriate security fence for the existing swimming pool.*

**MOTION:** Charles Krueger moved to approve Appeal #15-27. Ross Portolese seconded; motion carried with a vote of 4-0.

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**APPEAL #15-28** An appeal submitted by Jack Davis requesting a Use Variance and various Developmental Variances for **1620 Clover Road** to allow a marine use.

Tim McCollough, McCollough Scholten Construction, P. O. Box 245, Elkhart, IN, appeared on behalf of the Appellants. Mr. McCollough said the owner has someone interested in purchasing the property contingent on the approval of the Use Variance.

Mr. McCollough said the site consists of an existing 60' X 60' building with asphalt paving. He said the building will be renovated into a showroom with parts sales for marine uses. There is gravel parking on the east; storage area will be in the back with display on the north side of the building.

Mr. McCollough said the Use Variance is requested as the site is zoned industrial. He said they've also requested several Developmental Variances for parking, gravel, and such. He said they're requesting a variance from C-4 parking standards as this use doesn't require as much parking. Mr. McCollough also said the variances include gravel parking for boat display and storage.

Mr. McCollough said regarding comments from the Engineering Department, he would like to point out that the proposed area for gravel does stop before the fence line; they'll have a green area. He said gravel won't migrate to neighboring properties due to the grade difference.

Mr. McCollough also said Engineering questioned the gate location. He said it's imperative that the gate match fencing to the south that have gates along their frontage. Mr. McCollough said if you recess the gate it eliminates parking spots. It isn't the owner's intent to have boats delivered when he isn't open and navigating around vehicles in an old industrial area isn't uncommon and keeping the gate in front makes sense for his client.

Mr. Trippel said Engineering is asking that the gate be moved so the street isn't blocked while boats are being delivered. He asked if Mr. McCollough was saying that boats won't be delivered when the owner isn't there. Mr. McCollough said the boats should be delivered when they are open.

Mr. Prince said from staff's perspective is that Engineering's concern is the gravel storage area. In the rear yard it makes sense and over time gravel can migrate and perhaps we can come to some understanding on the gravel area.

Mr. Trippel asked what that would be. Mr. Prince said it's a minor issue relative to the site plan. He would recommend that Mr. McCollough work with staff on the gravel issues, but it's ultimately still up to Council to decide.

Mr. Krueger asked Mr. McCollough if he was aware of staff's recommendations regarding the site plan. Mr. McCollough said yes, he was.

Mr. Trippel closed the Public Hearing on Appeal #15-28.

### **Staff Recommendation**

*The Planning Staff recommends approval of Appeal 15-28 to allow a use variance for marine use, boat sales, service, display and storage on property located at 1620 Clover Street use subject to the following condition:*

- 1. An administrative site plan must be submitted for proposed site improvements. The site plan must address the concerns stated by the Engineering Department.*

*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 adjacent properties are zoned industrial.*
- 3. The need for the variance arises from some condition peculiar to the property in that the property is zoned I-2 Heavy Industrial and a C-4 Automobile Oriented Commercial District zoning classification is not appropriate for this location being surrounding by industrial uses.*
- 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 marine use. The use variance would allow the proposed marine use while maintaining the industrial zoning of the property to be utilized for industrial uses at a later date in time if needed.*
- 5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates industrial uses for this area. The need for a large area for the display and storage of boats is more consistent with industrial properties and uses than commercial properties and uses, and therefore, is in keeping with the surrounding industrial area as identified in the Comprehensive Plan.*

The Planning Department recommends approval of Appeal 15-28 for the following variances:

1. 0-ft pavement setback along the north and south property lines as necessary adjacent to the building only to allow for the safe movement of vehicles to the rear storage area.
2. A reduction in parking to a minimum of 11 customer parking spaces.
3. A variance to allow gravel parking in the rear boat storage area only.
4. A variance to allow 6-ft barbed-wire fencing within the front-yard.

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 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 appropriate stormwater management measures will be provided to prevent run-off onto adjacent property and parking will be provided that is sufficient for the proposed marine use.
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the building is existing and access to the rear of the property cannot be obtained without encroaching into the pavement setbacks. Fencing standards as identified in the Ordinance does not provide the needed protection needed. In addition, required asphalt/concrete pavement does not provide an appropriate pavement medium for the proposed weight of the boats.

**MOTION:** Ross Portolese moved to forward Appeal #15-28 to the Common Council with a favorable recommendation subject to the conditions of approval. Mrs. Wells seconded; motion carried with a vote of 4-0.

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**APPEAL #15-29** An appeal submitted by Notre Dame Federal Credit Union, Inc., requesting a Sign Variance for **111 West Edison Road** to allow an oversized freestanding sign.

Doug Merritt, Professional Permits, 2319 Lincolnway East, Mishawaka, appeared on behalf of the Appellant. Also in attendance was Jeff Trener, US Signcrafters, sales and operations director. Mr. Merritt said this request comes after substantial work off-line with Planning staff to come up with a solution. He said they prepared 6-7 renderings of the sign.

Mr. Merritt said the sign is a revitalization effort for Notre Dame Federal Credit Union and the building signs will be updated as well. He said the design itself is due to the radius cabinets of the sign face, which doubles the sign area. They aren't asking for twice the dimensional aspects, but due to the radius and the enhanced design features. Mr. Merritt said staff has prepared a recommendation supporting everything but the height.

Mr. Merritt said the height is a minor request and is 2' over code for what's allowed in the Main Street Overlay district. The existing sign sits behind a retention area that runs parallel with Main Street and has a 36' to 40' setback from Edison and Main Street respectively. The additional height will compensate for the setback.

Mr. Merritt said the plan is to use the existing foundation which brings down the cost and said while they appreciate staff's support of the design and collaboration he would ask the

Board to consider the additional height due to the setback from the roadways. He said if they didn't have the retention area, they would move the sign forward on the property as other signs along the corridor.

Mr. Trippel asked if Notre Dame Federal Credit Union owned the retention area. Mr. Merritt said he doesn't think it's an easement but rather private property, but he would need to double check. He said he would love to call it a water feature or water element, but it's probably a functional run-off and serves in that capacity. It doesn't have a fountain as some in Edison Lakes. Mr. Prince said he thinks it's private property and meant to filter water.

Mrs. Wells asked Mr. Prince if the additional 2' in height would create any problems for site line of traffic. Mr. Prince said no, staff's point is that it can be viewed from hundreds of feet away and it isn't proportionally impacted.

Mr. Prince asked if the area of the cabinet below the electronic message center could be removed to reduce the overall height. Mr. Merritt said yes, but they do need to have a ventilation panel below the EMC and above the limestone cap, but can probably keep at 3-4".

Mr. Trippel asked how much that would reduce the overall height. Mr. Prince said 6". Mr. Merritt said then the request would then be 18-20" of height.

Mr. Trippel said that wouldn't impact the sign relative to overheating. Mr. Merritt said no.

Mr. Prince said there's also a separation between the top and the EMC portion of the sign. Mr. Merritt said it's a two-post design and they want to make sure the design has a filler panel complements the overall design of the sign. If that were to be removed there would be a gap and it wouldn't be attractive and they wanted to bring a unique design to the corridor.

Mr. Merritt said if it's ok with staff, they would reduce the overall height of the sign and they could look at the tolerances for the top and bottom of the EMC and would only seek 12" variance in height.

Mr. Prince said he would concur with 9' OAH if the applicant were to amend the request.

Mr. Trippel closed the Public Hearing on Appeal #15-29.

Mr. Krueger said now they're talking about 12" over in height. Mr. Prince said yes, now they're only asking for 12" over in height.

Mr. Krueger asked Mr. Prince how he felt about it; would it open the door for others? Mr. Prince said it shouldn't create a precedent because we don't have many in violation right now. This is much closer in compliance with the ordinance. He said it's a win; they get a little extra height, and we don't have any concern over the precedent.

### **Staff Recommendation**

*The Staff recommends approval of the display area square footage variance, but not the height variances. Initial talks with the agent indicated Staff would not support the height variance, and the sign ultimately submitted is taller. 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 larger signage will be aesthetically pleasing sign given the artistic design, is a small percentage increase, and is visible from two streets; The use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner because none of the surrounding properties received a variance for sign height;*
3. *Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because the design of the sign causes it to be calculated double.*

**MOTION:** Marcia Wells moved to approve Appeal #15-29 subject to the reduction in overall height to 9'. Ross Portolese seconded; motion carried with a vote of 4-0.

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**ADJOURNMENT:** 6:33 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner