

NOVEMBER 10, 2015
BOARD OF ZONING APPEALS
MISHAWAKA, INDIANA

A regular meeting of the Mishawaka Board of Zoning Appeal was held Tuesday, November 10, 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, Don McCampbell, Ross Portolese, and Marcia Wells. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the October 13, 2015, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:
APPEAL #15-35

An appeal submitted by SLM Management LLC requesting a Sign Variance for **1725 East McKinley Avenue** to permit a roof sign. *Continued from the October 13, 2015, meeting. Appellant is requesting withdrawal.*

Mr. McCampbell read a letter from the Appellant requesting the item be withdrawn. The Board moved and approved the request.

APPEAL #15-41

An appeal submitted by Ronald Mullins requesting a Developmental Variance for **302 East Mishawaka Avenue** to permit a deck addition with a 15' front building setback and 1' exterior side building setback. *Continued from the October 13, 2015, meeting.*

Ronald Mullins, 302 E. Mishawaka Avenue, presented the appeal. He said the house used to have large awnings and flower boxes but were removed due to being in disrepair. He said since the City was beautifying the area, they wanted to join in and add a covered porch. Mr. Mullins said it would provide access to the home and the small retail business they have. He also said it would provide shade and more usability for the property and enhance its value.

Mr. McCampbell said the original request also included a side porch. Mr. Mullins said they decided to drop it due to contention and said they provided a letter removing the side porch from consideration.

Mr. McCampbell closed the Public Hearing.

Mr. Prince read a Letter of Remonstrance from August Baetsle, 224 E. Grove Street.

Mr. Krueger asked what the City's intent was for that side of Mishawaka Avenue; is it commercial, residential, mix? Mr. Prince said it's a hybrid and they are trying to accommodate the existing. He said they would rather the commercial properties convert back to residential as there is no parking; mostly hybrid uses within existing structures. He also said it's hit or miss going down Mishawaka Avenue.

Mr. Trippel asked if C-5 uses were limited. Mr. Prince said C-5 is one of only two zonings that permit residential and commercial uses.

Mr. Trippel asked Mr. Prince what he meant. Mr. Prince said residences can be converted to commercial, but must upgrade to ordinance standards. It's also easier to convert commercial to residential uses.

Staff Recommendation

Staff recommends denial of Appeal #15-41 as originally submitted to allow the construction of a 5' covered porch on the front of the home and 4' covered porch on the west side of the home resulting in a 15' front setback and 1' exterior side setback, but can approve the construction of a 5' covered porch on the front of the home. 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 setbacks will be similar to other homes in the area and the porch will enhance the residence; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the house currently encroaches into the front and exterior side yard setbacks. Any addition to the home could not be constructed without first seeking a variance.*

MOTION: Charles Trippel moved to approve amended Appeal #15-41. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #15-44 An appeal submitted by Ziker Cleaners Inc. as contingent purchaser, requesting a Use Variance for 1240 South Byrkit Street to permit a dry cleaning processing plant with drop-off/pick-up counter.

Brad Cramer, Progressive Engineering, 58640 State Road 15, Goshen, appeared on behalf of the Appellants. Mr. Cramer said Ziker Cleaners is requesting the Use Variance to convert the building from a grocery store to Ziker Cleaners. He said David Ziker with Ziker Cleaners was also in attendance.

Mr. McCampbell said it's the former Sav-A-Lot building that has been vacant for nearly 2 years.

Mr. Trippel asked exactly what they were looking at; are we changing the PUD? Mr. Prince said no, staff asked them to file a Use Variance because the PUD was amended last month to allow an apartment complex. He said the Use Variance is appropriate and is a good use

for the property and provide a good service to the neighborhood. That would leave only the vacant parcel at the corner which could be a convenience store.

Mr. Trippel asked if it would have drop-off and pick-up service. Mr. Cramer said yes.

Ms. Wells said there would be no drive-thru. Mr. Cramer said that was correct.

Mr. McCampbell closed the Public Hearing.

Staff Recommendation

The Staff recommends in favor of Appeal 15-44, a use variance for dry cleaning central processing at 1240 S Byrkit Avenue subject to the following conditions:

- 1. No drive-through facility be constructed; and*
- 2. The appellants provide exterior and interior remodel plan to the Planning Department.*

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 occupy a formally vacant building. 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 site is near a major intersection with other commercial uses on the corners.*
- 3. The need for a variance arises because a new tenant/owner wants to occupy a previously vacant building with a new use. A use variance would allow the dry cleaning central processing use, without affecting the entire PUD.*
- 4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current PUD only allows for C-2 Shopping Center Commercial which would allow dry cleaning, pick-up and delivery but not dry cleaning central processing.*
- 5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates general commercial and manufactured home residential uses for this area.*

MOTION: Charles Krueger moved to forward Appeal #15-44 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 5-0.

APPEAL #15-45 An appeal submitted by Great Lakes Capital requesting a Sign Variance for the northwest corner of Cleveland Road and Gumwood Road to permit two (2) 10' X 16', 14' tall, construction signs.

Amy Geyer, Site Enhancement Services, 6001 Nimtz Parkway, South Bend, appeared on behalf of Great Lakes Capital. She said they are requesting a variance for two over-sized

temporary signs; one is on Cleveland and the other on Gumwood Road. She said she has reviewed the staff report and agrees to the conditions.

Mr. Krueger asked if they would only be temporary. Mr. McCampbell said they were for construction purposes.

Mr. McCampbell closed the Public Hearing.

Staff Recommendation

Staff recommends **approval** of Appeal #15-45 to allow two 10' X 16', 14' OAH real estate development signs at the Grandview Development. This recommendation is based upon the following Finds of Fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because the sign will be located on the Appellant's property, outside of all City right-of-way and utility easements, and will not create a visual obstruction to motorists entering and exiting the property;
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 will be sufficient distance from any right-of-way or any neighboring property owner; and
3. Strict application of the terms of the On-Premise Sign Standards will result in a practical difficulty in the use of the property because the ordinance would only permit a sign display area of 32 sq ft for these large sized parcels.

MOTION: Ross Portolese moved to approve Appeal #15-45. Charles Trippel seconded; motion carried with a vote of 5-0.

APPEAL #15-46 An appeal submitted by Beacon Health System requesting a Sign Variance for the southwest corner of Capital Avenue and Beacon Parkway to permit an 8' X 144' temporary informational sign to be installed on a construction fence.

Phil Panzica, Panzica Building Corporation 422 E. Monroe Street, South Bend, appeared on behalf of Beacon Health Systems. He said they are requesting approval for 8' X 144' construction and marketing fencing. He said it wouldn't be a solid fence line, but construction fencing that wraps around the corner. Mr. Panzica said it would be a bit translucent.

Mr. Panzica said the center portion is construction signage showing what the project would look like, who is the builder, who owns the property, etc. The balance is marketing signage and that it's Beacon Health Systems and they anticipate multiple buildings. Mr. Panzica said it will also announce an initiative for a healthy community.

Mr. Panzica said this is a \$15,000,000 project and said along Capital there is a large grassy area off the highway with a 55 mph speed limit. They want the sign to be readable. He said the sign will be for the construction period of approximately 12 months. It won't be injurious or detrimental.

Mr. McCampbell closed the Public Hearing.

Staff Recommendation

Staff recommends **approval** of Appeal 15-46 to allow one 1,152 sq. ft. (8' x 144') informational and marketing banner (construction sign) located on-site only during construction. 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 the sign will be located on the Applicant's property, outside of all City right-of-way, will not create a visual obstruction to motorists travelling along the adjacent roadways, and will only be located on-site 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 all adjacent property is currently undeveloped, and the sign will only be located on-site during construction; and
3. Strict application of the terms of the On-Premise Sign Standards will result in a practical difficulty in the use of the property because the ordinance would only permit a sign display area of 32 sq. ft. which limits the visibility of signage due to speed limits on the adjacent roadways and the size of the development project.

MOTION: Charles Krueger moved to approve Appeal #15-46. Marcia Wells seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:19 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner