

JANUARY 12, 2016

**BOARD OF ZONING APPEALS
CITY OF MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, January 12, 2016, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Trippel, Ross Portolese, and Marcia Wells. Absent: Charles Krueger and Don McCampbell. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Derek Spier, and Kari Myers.

The meeting was turned over to Ken Prince for the election of officers.

ELECTION OF OFFICERS:

MOTION: Ross Portolese moved to nominate Don McCampbell as Chairman. Marcia Wells seconded; motion carried with a vote of 3-0.

MOTION: Ross Portolese moved to nominate Charles Trippel as Vice-Chairman. Marcia Wells seconded; motion carried with a vote of 2-0.

Mr. Trippel explained the Rules of Procedure.

The Minutes of the December 8, 2015, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #15-47 An appeal submitted by Family Express Corporation requesting a Sign Variance at the **northeast corner of Edison Road and Hickory Road** to permit an oversized freestanding sign. *Continued from the December 8, 2015, meeting.*

Todd Etzler, General Counsel and Vice President of Public Affairs, Family Express, 213 S. State Route 49, Valparaiso, presented the request. He said Family Express is the contingent purchaser of the property and plan to build a convenience store and gas station on the site.

Mr. Etzler said they are seeking a Sign Variance to install a 131 sqft sign. He said the ordinance bases sign area on lineal lot frontage and per the standards they can have a 94 sqft sign. The rest of the sign meets code.

Mr. Etzler said strict adherence to the ordinance causes hardship due to the length of the frontage, speed of traffic, and number of travel lanes on Edison.

Mr. Etzler said the site is an elongated rectangle with 225' of frontage on Edison and 389' front on Hickory. If the size calculations were based on the longest frontage, then the sign could be 162 sqft; their request is somewhere in the middle.

Mr. Etzler said their hardship is due to the way the parcel is configured with the short side along Edison and longer side along Hickory. Both Hickory and Edison have high speeds and a lot of traffic and having a smaller sign is a hazard. People need the sign as a means of wayfinding and this sign is used in their fleet of stores of similar size. The size allows motorists to safely view and identify the site.

Mr. Etzler said further, both Edison and Hickory widen to five lanes at the intersection. For someone to see the signage you have to look over 3-5 lanes of traffic and you are going to have obstruction. Also, the sign will have pricing information and Mr. Etzler maintains that pricing shouldn't count toward the convenience store's signage. He said the public relies on that pricing and that's a requirement as people will drive 4-5 miles to save a penny on gas. That one sign is a benefit to the community.

Mr. Etzler said this sign won't be detrimental to adjacent properties. He said the first adjacent property is being split from this, and the owner has approved of this sign. The other adjacent property to the north, the cinema, would have the building, a road, and a significant parking area between the Family Express and the cinema. It won't be seen and they won't be affected. Mr. Etzler said the same thing that causes the obstruction also buffers properties across the street and they won't be affected by the sign of sign.

Mr. Etzler said the general public expects to see this type of sign when driving on large roads with high volumes of traffic. The pricing sign is expected by the public and is necessary.

Mr. Etzler respectfully asked the Board to grant the variance to allow the 131 sqft sign because the size of the parcel and number of travel lanes causes hardship. He said it's commercial in nature and the public expects this type of sign.

Mrs. Wells asked what the speed limit was on Edison Road. Mr. Prince said he would estimate 35 mph; maybe 40 in South Bend, but typically not above 30 mph.

Mr. Trippel closed the Public Hearing on Appeal #15-47.

Mr. Trippel asked Mr. Prince about the staff report. Mr. Prince said staff recommended denial even though the case was well presented. He said the 94.2 sqft is the size allowed and without a variance they could essentially put up (3) 4' X 8' sheets of plywood. Mr. Prince said Meijer is limited to 60 sqft of sign area for a 100,000 sqft store. Mind you, they don't have a pricing sign. We just don't see a hardship for the variance.

Mr. Portolese said the site is located at a stoplight and thinks 94 sqft is acceptable.

Staff Recommendation

*The Staff recommends **denial** of Appeal #15-47 to allow for the construction of a freestanding monument sign to exceed the allowable 94.2 square feet of display area to 131 square feet. This recommendation is based on the following Findings of Facts:*

- 1. The approval may be injurious to the public health, safety, morals and general welfare of the community because the On-Premise Sign Standards were established to reduce excessive signage and sign clutter by limiting height, size and number of signs. This appeal is in direct contradiction of that intent;*
- 2. Use and value of the area adjacent to the property included in the variance could be affected in a substantially adverse manner because the sign will be designed and constructed with no consideration or regard to the On-Premise Sign Standards adopted for the City of Mishawaka; and*
- 3. The strict application of the terms of this chapter will not result in practical difficulties in the use of the property because, if the On-Premise Sign Standards are adhered to, the site can be properly and adequately identified from the adjacent roadways. Any hardship is self-created as the sign can be redesigned to comply with the existing sign standards.*

MOTION: Ross Portolese moved to deny Appeal #15-47. Marcia Wells seconded; motion carried with a vote of 3-0.

APPEAL #15-48 An appeal submitted by Daniel Robinson requesting a Developmental Variance for **610 Ballard Avenue** to permit a 30' X 30', 17' tall garage, with a 10' front yard setback and 10' exterior side yard setback. *Continued from the December 8, 2015, meeting.*

Richard Atkinson, Concrete Work and Home Improvements, appeared on behalf of Daniel Robinson. He said Mr. Robinson wants to build a 30' X 30' garage, 17' in height. It will be located 10' from both Ballard and Cottage.

Mr. Prince said it's been identified that there are other homes in the area with setbacks that range from 10' to 15'. This is actually on the corner where Ballard dead ends at the river and by right could be 12' 6".

Mr. Trippel closed the Public Hearing on Appeal #15-48.

Staff Recommendation

*The Staff recommends **approval** of Appeal 15-48 to allow an accessory building exceeding the allowable 720 sq. ft. to 900 sq. ft. located in the front yard, to exceed the allowable height from 15' to 17', and to reduce the required front setback on Cottage Avenue and Ballard Avenue from 25' to 10'. 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 many homes along the river on the north side of Cottage Avenue have accessory buildings or attached garages located within in the front setback without causing any adverse effects; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the unique layout of this "reverse" frontage lot provides buildable area for accessory structures only in the front yard setback area.*

MOTION: Marcia Wells moved to approve Appeal #15-48. Ross Portolese seconded; motion carried with a vote of 3-0.

APPEAL #16-01 An appeal submitted by Young Minds Development Center LLC, requesting a Sign Variance for **1026 Dodge Avenue** to permit a wall sign in the R-2 Two-Family Residential District.

Vanessa Jackson, Young Minds Development Center, 1026 Dodge Avenue, presented her request. She said about six months ago she got a Use Variance for the day care/community center. Ms. Jackson said today she is requesting to add a sign to the building to promote the center as she's been told she can't have yard signs. She said at some point in the future she would like to have a monument sign, but cannot afford to do so right now and she wants to do it right. She's asked Next Day Signs to develop a sign that they would like to put on the building to identify the center.

Mr. Portolese asked Ms. Jackson if she had any other locations. She said no, this is her first place. It's actually the old Salvation Army building.

Mr. Trippel closed the Public Hearing on Appeal #16-01.

Mr. Prince said the odd circumstances are that it's a commercial building located in a residential area. Ideally, signs would have been approved at the time the Use Variance was requested and we would have liked to have approved the monument sign, but permits have to be pulled within a certain period of time. He said the wall sign can remain in perpetuity as long as it's well kept. Mr. Prince did add that if someone would change the use of the building, they would lose the wall sign.

Staff Recommendation

The Staff recommends approval of Appeal #16-02. 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 sign will be mounted flush against the building and will be installed by a licensed sign contractor;*
- 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 sign will be non-illuminated and appropriately proportioned in size for the wall on which it will be installed; and*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty in the use of the property because wall signs are not permitted in the R-2 zoning district and there is no provision to allow a sign for a commercial business in the district.*

MOTION: Marcia Wells moved to approve Appeal #16-01. Ross Portolese seconded; motion carried with a vote of 3-0.

APPEAL #16-02 An appeal submitted by InSite Real Estate requesting a Developmental Variance for **103 East University Drive, Granger**, to allow for a reduction in parking spaces for proposed restaurant use.

Michael Weber, InSite Real Estate, 1400 16th Street, Oak Brook, IL, presented the request. He said his firm is a national development firm that specializes in build-to-suits. He said the center is located just north of I-80 and east of University Park Mall, in the Target outlot.

Mr. Weber said the 12,000 sqft building was built in 2006 and has 65 parking spaces. There has been no expansion to the six-tenant building; one being vacant. Mr. Weber said they are requesting a parking variance for a restaurant use in the vacant space. He said the variance is necessary as restaurant uses require more parking than retail.

Mr. Weber said they have spent considerable time trying to lease this space and this tenant is the best use for what they are trying to fit in and this variance will help them move forward with negotiations. He said based on the current tenant mix, they are low-intensity retail uses and they don't utilize the parking spaces they have and a small restaurant wouldn't negatively impact the tenants.

Mr. Weber said they have been part of the community for nearly a decade and they think having this space leased is in the best interest of the city.

Mr. Portolese asked if they were in Mishawaka. Mr. Weber said yes.

Mr. Prince asked if they have cross-access easements with Target. Mr. Weber said no.

Mr. Trippel closed the Public Hearing on Appeal #16-02.

Mr. Prince said this is a small commercial center and we have reduced parking in other centers. He said we want them to use their parking to the fullest and we've never seen all of Target parking spaces filled.

Staff Recommendation

The Planning Staff recommends approval of Appeal 16-02 to allow a reduction in number of required parking spaces from 72 spaces to 65 spaces for the existing commercial uses and proposed restaurant. 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 adequate parking will be maintained on the property for both the current and proposed tenants;*
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 parking area and number of spaces provided is sufficient to support the existing and proposed uses. The parking lot is underutilized as the current tenants are low intensity uses that do not use all the spaces provided.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property as it would not allow the appellant to lease the remaining space for restaurant use. The additional traffic generated from the proposed use will not adversely affect the property.*

MOTION: Ross Portolese moved to approve Appeal #16-02. Marcia Wells seconded; motion carried with a vote of 3-0.

ADJOURNMENT: 6:27 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner