

MARCH 8, 2016

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, March 8, 2016, 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, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the February 9, 2016, meeting, were approved as distributed.

Conflict of Interest was not declared.

**PUBLIC HEARING:
APPEAL #16-05**

An appeal submitted by Gates Automotive Group on behalf of University Park Mall LLC requesting a Use Variance for **6501 Grape Road** to permit three (3) separate off-site Used Car Sales as follows: ten (10) days in May, ten (10) days in June, and ten (10) days in August for three (3) consecutive years, with temporary signage including banners and cold air balloons, and a mobile office facility for business transactions and securing of valuables.

Clint Emberton, General Sales Manager, Gates Automotive, 714 Dice Court, South Bend, presented the appeal. He said they are once again requesting a Use Variance in order to hold up to three used car sales events in the J C Penney parking lot at University Park Mall for the next three years (held between May and September, dates to be determined) and the request is identical to the previous requests.

Mr. Emberton said both the City nor Simon Properties has received complaints relative to the event and the mall considers them an asset to the other businesses. They also leave the area better than they found it.

Mr. Emberton outlined 5 findings of fact and, they are as follows:

1. He said the approval will not be injurious to public health. They go to great length to address public health concerns such as trash receptacles, sanitary facilities, tents to provide comfort for staff and customers. No complaints have been received by the City.
2. The use and value of area will not be adversely affected. Mr. Emberton said he is unaware of anyone within the 300' who filed a qualified complaint against last year's event. They use approved and safe entrances from Grape and SR 23 and chose the least traveled area of the mall. This has proved to be an asset to their business model. The mall and outlying businesses enjoy the benefit the high volume traffic brings.

3. For the past 4 years Chevrolet has maintained an active display inside of the mall, but cannot sell cars in the mall. Mishawaka had the foresight to approve the mall 30 years and it is a regional attraction.
4. The strict application of the ordinance causes a hardship. The variance is for Simon Property, not Gates Chevrolet. They are proud to partner with the mall. He said staff finds: University Park Mall is one of a few regional facilities who can handle this event. A study from last year's event showed nearly 30% of sales were from outside of Indiana and outside our County and over 3,000 people were drawn to the event. Only sold to 30% of qualified customers, other 70% of traffic drove down the road and shopped at other dealerships or vendors in the area. Mr. Emberton said the mall is in the business of leasing and they want the same opportunity as other businesses to hold this event.
5. In 2013, Gates complied with all layout requirements for the sale, allowed for unimpeded traffic flow and had additional precautions as well.

Mr. Prince read a letter of support from University Park Mall Manager Ryan Ginty.

Mr. McCampbell closed the Public Hearing on Appeal #16-05.

Mr. Trippel asked about the significance of the 3-year approval. Mr. Prince said when they first started doing this we did it every year and we thought that was too much. He said three years is a reasonable amount of time for a temporary event and there's no sense in granting the approval in perpetuity.

Staff Recommendation

*Staff recommends in **favor** of Appeal 16-05, Use Variance, to allow for the temporary use of a portion of the University Park Mall parking lot for an off-site car sales event for three (3) ten day periods per year, for the next three years. The event proposes utilizing three (3) tents, mobile office facility, and temporary signage. The Use Variance is subject to the following conditions:*

USES:

- *The event shall be limited to the display and sales of automobiles and light trucks for ten (10) days in May, June, and August of 2016, 2017, and 2018 as presented.*

SITE PLAN:

- *A site plan/layout shall be submitted identifying the location of display areas, visitor parking, tents portable toilets, temporary lighting, and other related temporary improvements subject to staff review and approval. Written approval of the site plan/layout shall be required from University Park Mall, LLC.*

ACCESS/TRAFFIC CONTROL REQUIREMENTS:

- *Access to the event use shall be through existing mall entrances. Additional restrictions may be requested by the City of Mishawaka the Director of Engineering as deemed appropriate as part of the review of a site plan/layout. The City of Mishawaka Police Department may also request any modifications to layout, parking, access, or attention devices during the event if it is deemed problematic to through traffic, or any safety issue is identified.*
- **All mall service drives shall remain open at all times.**

SETBACKS:

- All tents, display/parking areas, portable toilets and large inflatable balloons shall be setback a minimum of 25 feet from any road right-of-way and 10 feet from any internal access drive.

SIGNAGE/ATTENTION DEVICES:

- A plan identifying the location and type of all signage/attention devices shall be submitted subject to staff review and approval. A maximum of two (2) temporary signs no larger than 4' X 8' shall be permitted on Grape Road. A maximum of two temporary signs shall be permitted along State Road 23. **No inflatable air balloons shall be permitted.** All signs and attention getting devices shall not flash or be animated where they are overtly distracting to the motoring public. Internal directional signs shall also be permitted as necessary provided they are not visible from surrounding major roadways.

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 development is temporary and will maintain certain minimum developmental standards as outlined herein;*
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 area is surrounded by commercial development;*
3. *The need for the variance arises from some condition peculiar to the property involved in that the C-2 zoning does not permit vehicle sales, even on a very limited basis, thus requiring the Use Variance for the proposed use;*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance as drafted, would not permit the Appellant to hold their regional event at this site, specifically, the University Park Mall is one of the few regional facilities that has been inherently constructed to handle this type of event by having the appropriate access, lighting, and parking;*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial and the surrounding area is one of the largest consolidated retail areas in the State of Indiana.*

MOTION: Charles Trippel moved to forward Appeal #16-05 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #16-06 An appeal submitted by 1250 Park Place, LLC, requesting a Developmental Variance for **1250 Park Place** to reduce the required number of parking spaces for a marketing/advertising office.

Terry Lang, Lang Feeney & Associates, 715 S. Michigan Street, South Bend, appeared on behalf of the Appellants. He said the site is located at the northwest corner of Park Place and Filbert Road and is the former Frank's Nursery and has been vacant at least 2-3 years.

Mr. Lang said the owner of the building has been approached by a marketing company that has outgrown the office they are in. They have 36 employees and this is exactly what they

are look for. He said additional parking can be added to the site with minor modifications. Mr. Lang said they would be required to have 63 spaces, but are providing 42. This business doesn't generate a high volume of customers and they feel the parking should be more than adequate.

Mr. McCampbell closed the Public Hearing on Appeal #16-06.

Staff Recommendation

The Planning Staff recommends approval of Appeal 16-06 to allow a reduction in number of required parking spaces from 63 spaces to 42 spaces for the proposed office use. 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 the proposed use as a professional office. Furthermore, the appellant states that there is not a need for the number of parking spaces required per ordinance since only 36 employees will occupy the 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 parking area and number of spaces proposed is, according to the appellant, sufficient to support the proposed office use; and*
- 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 sale or lease the property for the proposed use.*

MOTION: Ross Portolese moved to approve Appeal #16-06. Marcia Wells seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:22 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner