

MAY 10, 2016

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, May 10, 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, Christa Hill, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the April 12, 2016, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #16-11 An appeal submitted by Cedar Crest Apartments requesting a Developmental Variance for **510 West Jefferson Boulevard** to permit a 6' chain link fence with a 0' exterior side yard setback.

Patricia Bennett, Cedar Crest Apartments, 510 W. Jefferson Blvd., said they have a 4' fence that's in disrepair and they want to replace it with a 6' chain link that will hook up to a 6' chain link fence along their property on Liberty Drive.

Mr. McCampbell closed the Public Hearing on Appeal #16-11.

Staff Recommendation

*Staff recommends **approval** of Appeal #16-11 to allow the installation of a 6' chain link fence with a 0' exterior side yard setback along the Liberty Drive frontage. 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 fence is replacing a one in disrepair;*
- 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 new fence will improve the appearance of the property and provide added security between the apartment complexes; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because given the location of the fence between the two apartment complexes; a 4' fence would possibly allow unauthorized access to their property.*

MOTION: Ross Portolese moved to approve Appeal #16-11. Marcia Wells seconded; motion carried with a vote of 5-0.

APPEAL #16-12 An appeal submitted by Michael E. Young requesting a Developmental Variance for **1020 Wilson Boulevard** to permit a solid fence with 0' exterior side yard setback along Wilson Boulevard and Logan Street.

Michael Young, 1020 Wilson Boulevard, said they have a pool with an existing fence that runs along Logan and cuts off at the south end close to the pool. He said the chain link fence is in disrepair and they're proposing to replace all with a 6' privacy fence.

Mr. Krueger asked if there will be a gate to get to the triangle portion of the yard. Mr. Young said yes, along the south edge, east edge, and on the far northwest side by the garage; they will be 4' gates. He also said the new fence will incorporate the old brick structures on the southeast and southwest sides of the property. They are 6' tall and they were put in about 40-50 years ago.

Mr. Krueger asked if the new fence will be similar to the existing fence. Mr. Young said yes.

Mr. Trippel asked Mr. Young how long he had owned the house. Mr. Young said since May of 2015.

Mr. Trippel said he has always admired the house as it's so unique. Mr. Young said he had as well. They are trying to keep everything that is cool about the house.

Mr. McCampbell closed the Public Hearing on Appeal #16-12.

Staff Recommendation

The Staff recommends approval of Appeal 16-12 to allow installation of a 6' fence in the exterior side yard along Logan Street and Wilson Blvd. 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 proposed fence is partially replacing an existing fence 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 along Logan Street or Wilson Blvd.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the triangular shape of the lot and frontage on three roads creates two exterior side yard setbacks.*

MOTION: Charles Krueger moved to approve Appeal #16-12. Charles Trippel seconded; motion carried with a vote of 5-0.

APPEAL #16-13 An appeal submitted by North Grape Road, LLC, requesting a Developmental Variance for **6402 Grape Road** to allow for reduced landscaping and parking lot setbacks.

Jack DeGagne, 130 Hercules Court, Ocoee, FL, appeared on behalf of Longhorn Steakhouse. He said they are proposing to demolish the existing Famous Dave's and build a new restaurant. Mr. DeGagne said due to the site constraints, the only place to put the building is in the same spot.

Mr. DeGagne said the building is in disrepair and the new building will be accentuated with landscape around the building and they will use the existing parking.

Mr. McCampbell closed the Public Hearing on Appeal #16-13.

Staff Recommendation

The Planning Staff recommends approval of Appeal 16-13 to allow a reduction in the required parking lot setbacks and landscaping for a proposed new 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 the site was previously occupied as a restaurant and developed in a similar manner with similar improvements. The proposed parking lot, landscaping, and other site improvements will enhance existing conditions.*
- 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 new restaurant, site improvements, and landscaping will improve the existing site conditions and potentially attract additional customers to the adjacent retail area.*
- 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 redevelop the site in a similar manner for a new restaurant. Increased parking lot setbacks, as required, would result in the loss of parking spaces needed for the site.*

MOTION: Marcia Wells moved to approve Appeal #16-13. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #16-14 An appeal submitted by Ari Lambridis requesting various Developmental Variances for **2419 Lincolnway West** to permit the addition of a drive-thru window.

Nick Scarlatis, 5405 W. 127th Street, Crestwood, IL, appeared on behalf of Ari Lambridis. Mr. Scarlatis said Mr. Lambridis has operated Gyros King for a number of years and wants to improve the building and surrounding lot. Mr. Scarlatis said the owner also feels it's important to have a drive-thru window and the zoning will need to be changed to C-7 to permit the use.

Mr. Scarlatis said the entire area is paved and they want to soften the look so people will come in. They plan on putting in quite a lot of landscaping, an ornamental iron fence on the south and east side of the property to kind of enclose the area. Mr. Scarlatis also said they will repave the parking lot.

Mr. Scarlatis said other changes will include changing the façade of the building, enclosing the trash area in the back, and adding curbing and landscaping. He also said planter boxes will be added along the front of the building.

Mr. Scarlatis said a curb will be added around the back with landscaping to create a cue to the drive-thru window. They'll also need to convert the two-way drive to a one-way drive and will change the far east parking area to angle parking to make the drive-thru window safe.

Mr. Scarlatis said the building will remain the same, but they'll remove the dark mansard roof and give it a fresh look and go with EIFS to give a modern look. Entrances on the east and west side of the building will be emphasized.

Mr. Scarlatis said the sign will remain the same, but may get new copy on it.

Mr. Scarlatis said the building will be lighter in color, cleaner, and brand-new looking and Mr. Lambridis is hoping that will attract the people. The interior will be changed it refreshed. He said it won't change the basic operation, but because they are adding the drive-thru window, they need to do some rearranging. He also said bathrooms will be updated and ADA compliant.

Mr. Scarlatis said they feel the changes will improve the area with a nicer, more attractive building and won't harm the area in any way. They also hope that other businesses will put money into their businesses as well.

Mr. McCampbell closed the Public Hearing on Appeal #16-14.

Mr. McCampbell said Mr. Scarlatis talked about planters, but didn't see anything about it in the staff report. Mr. Spier said it isn't required for landscaping, but something they are doing with the patio.

Mr. Trippel said they've talked about a lot of stuff and wanted to know just what they would be voting on. Mr. Prince said the fencing, setbacks, due to the changes they have to bring into compliance, but can't due to the constraints of the lot.

Staff Recommendation

The Planning Staff recommends approval of Appeal 16-14 to allow a reduction in building and parking lot setbacks, number of parking spaces, and required landscaping; and type of dumpster enclosure due to addition of a drive-thru window to an existing 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 the site is presently occupied with an existing restaurant and will be greatly improved as a result of adding a drive-thru. The proposed parking lot, landscaping, exterior building and other site improvements will enhance existing conditions.*
- 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 new drive-thru for an existing restaurant, site improvements, and landscaping will improve the existing site conditions.*
- 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 add a drive-thru to the existing restaurant.*

MOTION: Charles Trippel moved to approve Appeal #16-15. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #16-15 An appeal submitted by Chase Properties LTD requesting various Developmental Variances for **5600 block of Grape Road (north of Hobby Lobby)** for reducing building and parking setbacks, and reduced number of parking spaces for a new 4,000 sqft outlot building.

Joshua Lyons, GPD Group, 520 S. Main Street, Akron, OH, appeared on behalf of Chase Properties. Mr. Lyons said this will be a new development within the existing Wilshire Plaza on Grape Road. It will be 4,000 sqft with two tenants. Mr. Lyons said they have a hardship in that there are similar uses within the center, but dissimilar owners.

Mr. Lyons said the west parking will be aligned with the existing parking; not changing the setback. He said to the south is a parking setback issue with similar use and dissimilar owner with the property line that runs thru the parking lot.

Mr. Lyons said to the north is a parking setback having to do with an internal access drive off of Grape Road. It's a right-in only and causes a flow east across the parking lot so it is aligned with the existing lot to the east. He said without shifting that alignment, they have a variance request that is small.

Mr. Lyons said as for the parking variance, the center requires 1,407 spaces and they are proposing 1,372. He indicated the staff report says there is more than enough parking for the center and the reduction is inconsequential. Mr. Lyons said they have actually exceeded the required number for the new building.

Mr. McCampbell closed the Public Hearing on Appeal #16-15.

Staff Recommendation

The Planning Staff recommends approval of Appeal 16-15 to allow a reduction in the required building and parking lot setbacks and number of parking spaces for a proposed 4,000 sq. ft. multi-tenant (retail) building. 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 development of the outlot will occur within an existing parking area of a commercial strip center. The placement of the new multi-tenant building and reconfiguration of the parking lot and access drives provides for full traffic flow, access, adequate parking and additional greenspace. Site improvements will enhance existing conditions.*
- 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 new building, site improvements, and landscaping will improve the existing site conditions, reduce stormwater runoff, and potentially attract additional customers to the adjacent retail area.*
- 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 area of the proposed outlot to be developed as efficiently as possible. Increased building and parking lot setbacks, and providing the required number of parking spaces for the entire commercial center, would not allow for the site to be developed as proposed.*

MOTION: Ross Portolese moved to approve Appeal #16-15. Marcia Wells seconded, motion carried with a vote of 5-0.

APPEAL #16-16 An appeal submitted by Beacon Health System requesting a Use Variance for **3221 Beacon Parkway** to permit a temporary membership sales office trailer until December 31, 2016.

Phil Panzica, Panzica Building Corporation, 422 E. Monroe Street, South Bend, appeared on behalf of Beacon Health System and their request for a temporary membership sales office trailer. Mr. Panzica said Beacon's charge is to take care of acute illness and realizing that keeping the community healthy and fit extends lives.

Mr. Panzica said the new 68,000 sqft Beacon Health Center is under construction and will have pools, cardio, and physical therapy, among their services. He said they would like to initiate a

large membership drive in the community and would like to have the sales trailer at the jobsite as it isn't feasible to provide space in the construction trailer.

Mr. Panzica said the trailer will be 12' X 42' trailer that will look like a small office and they will extend temporary power and water services to it. A single person will staff it 5-6 days a week so the community can see a presentation of the services they offer.

Mr. Panzica said the new health facility is anticipated to open in October or early November and the trailer will be removed and the site be put back together.

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

Staff Recommendation

Staff recommends **approval** of Appeal #16-16 to permit a 12' X 42' temporary membership sales office to be located on the property through December 31, 2016. 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 structure will be professionally installed, maintained, and removed upon the end of use by the end of 2016.
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 sufficiently large enough to safely accommodate the construction trailer and the temporary membership sales office.
3. The need for the variance arises from some condition peculiar to the property in that the Zoning Ordinance does not allow for additional temporary offices on a property besides the construction trailer and it wouldn't be safe/practical to incorporate the construction office and membership sales office into the same building.
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 Ordinance does not allow for the use of an additional temporary structure on the property during construction of the main building and the health facility would not be allowed to conduct on-site membership sales without it.
5. The recommendation is consistent, and/or, not in conflict with Comprehensive Plan which indicates commercial/office uses for this area.

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

ADJOURNMENT: 6:37 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner