

**JUNE 14, 2016**

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, June 14, 2016, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Don McCampbell, Ross Portolese, and Marcia Wells. Absent: Charles Trippel. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

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Mr. McCampbell explained the Rules of Procedure.

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The Minutes of the May 10, 2016, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #16-17** An appeal submitted by All Secure Fir Road Storage, LLC, requesting a Use Variance for **3904 thru 4012 Fir Road** to permit automotive/motorcycle service and auto body repair in an I-1 Light Industrial District.

Kevin Paczkowski, All Secure Fir Road Storage, 5222 W. Western Ave., South Bend, said Veldman had eleven (11) All Secure storage facilities. He said they are asking to be able to do some very light mechanical work in two buildings, 3904 and 3916 Fir Road.

Mr. Paczkowski said they have a tenant with a motorcycle repair shop that repairs fenders, pieces them together. He said he's a vintage-type collector who collects and repairs. Mr. Paczkowski said the motorcycles the man works on are small units and they're inside. He said he doesn't put any outside and can be corralled inside.

Mr. Paczkowski said they purchased the facility in 2014 and it isn't a typical Veldman type of facility. He said he actually advised against purchasing it as it isn't their usual high level of storage; not like University Park and Hickory Storage (behind Movies 14) which are premiere properties. This is a different facility; more of a commercial type. Mr. Paczkowski said there are several mini businesses in the facility and some businesses use the storage to store material for their next job and it's convenient for them.

Mr. Paczkowski said they have contracted with a roofing contractor for a new roof on the aging facility and they want to get the type of roof they are looking for. They have \$230,000.00 into a new roof.

Mr. Paczkowski said they are trying to bring up to status of the other businesses in the area and trying to make it better. They have added \$15,000.00 in lighting; they are going to paint the facility and that takes a lot of money. He said they have added a fenced-in area and asked what did that have to do with the variance?

Mr. Paczkowski said they have a good tenant with the motorcycle guy. He pays his bills and that's the lifeblood of the organization and they want good people in there.

Mr. McCampbell asked Mr. Paczkowski if he understood the conditions of approval. Mr. Paczkowski said yes, and signage is not an issue. However, he was concerned about no outside storage of inoperable vehicles. He said they are adjacent to an elevated railroad tracks and they did add a fenced-in area near there. They are not visible from Fir Road as it sits about 350-400 feet from the road. Mr. Paczkowski said they are asking for a little relief on that because it's so far off the road. He said they know what auto repair places can turn into and it's hard to do auto repairs with only one car inside and no place to stage others.

Mr. Portolese asked how large the fenced-in area was. Mr. Paczkowski said about 1,000 sqft.

Mr. Prince said the request did not include outside storage and wasn't advertised as such. He said from Staff's point, it's a separate issue and they'll have to come back before the Board for outside storage and advertise again. Mr. Prince said staff could have helped if we had understood that.

Mr. Paczkowski asked about sanitary requirements. He said at their service center they can collect all oil in suitable containers; Veldman is the king of recycling and that's their intent of how they would handle the oil. They would supply approved containers and the oil would be recycled.

Mr. Prince said this requirement is different and suggested they talk to the Engineering department and they would want something in the floor. He said things drip when you work on the floor and that's intended to be a floor drain with separator to keep out of sewers. Mr. Prince said that requirement would not change with a different meeting.

Mr. McCampbell closed the Public Hearing on Appeal #16-17.

### **Staff Recommendation**

*The Staff recommends in favor of Appeal 16-17, a use variance for automotive and motorcycle maintenance and automobile body shop uses at 3904 and 3916 Fir Road, subject to the following conditions:*

- 1. The use variance shall be limited to automotive and motorcycle maintenance and automobile body shop, and shall be limited to indoors. No outside storage of inoperable vehicles, materials and/or vehicle parts will be permitted;*
- 2. Temporary signage shall be limited to being flush mounted to wall.*
- 3. A sanitary sewer plan for the site that will incorporate oil interceptor and grit/sand interceptor requirements for vehicle automotive maintenance business.*
- 4. Inspections by the Building Department and Fire Department prior to occupancy.*

*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 have no impact on the adjacent industrial uses that currently operate there. The proposed use is consistent with the existing industrial properties within the area.*

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 of the other industrial and commercial uses along Fir Road and Day Road and the barrier of the railroad tracks to the east.*
3. *The need for a use variance arises from the nature of the area, where property owners are very protective of the intensive zonings of their properties. A use variance would allow the proposed automobile commercial use, while still protecting the industrial zoning for future use and also protecting the residential users to the east and west.*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current I-1 light Industrial zoning would not allow for the proposed automobile oriented commercial uses.*
5. *The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies other surrounding areas as industrial. The approval is consistent with the goals and objectives of the Comprehensive Plan.*

**MOTION:** Ross Portolese moved to forward Appeal #16-17 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-0.

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**APPEAL #16-18** An appeal submitted by Bendan Properties requesting a Sign Variance for **5809 Grape Road** to allow a sign mounted on a canopy.

Will Gedeski, Bendan Properties, 4220 Edison Lakes Parkway, Mishawaka, appeared on behalf of the request. He said the canopy sign is part of the Burger King corporate branding and they are asking the Board for your approval.

Mr. McCampbell closed the Public Hearing on Appeal #16-18.

**Staff Recommendation**

*The Staff recommends approval of Appeal 16-18 to allow the "HOME OF THE WHOPPER" sign to sit on top of the entrance canopy at 5809 Grape Road as submitted. 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 signage is an integral part of the architectural design, is aesthetically pleasing, and represents an investment in the community;*
3. *Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because corporate standard signage cannot be utilized on a building that was designed to incorporate the proposed canopy signage.*

**MOTION:** Marcia Wells moved to approve Appeal #16-18. Ross Portolese seconded; motion carried with a vote of 4-0.

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**APPEAL #16-19** An appeal submitted by LaPetite Academy requesting a Developmental Variance for **130 East Catalpa Drive** to permit a 6' chain link fence with a 0' front yard setback.

Joe Kubiak, 11080 S. Wolf Creek Pike, Brookville, OH, appeared on behalf of LaPetite Academy. Mr. Kubiak said they are changing out the existing 6' chain link fence that has become rusted and unsightly.

Mr. McCampbell closed the Public Hearing on Appeal #16-19.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal 16-19 to allow installation of a 6' high chain link fence within the 25' front yard along East Catalpa Street. 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 replacing an existing fence in disrepair 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 new fence will improve the appearance of the property and provide the needed security for the day care center and playground area; 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 within the front yard along East Catalpa Street and adjacent to the playground area, a 4' high fence, as permitted, would not provide the security required for the day care center.*

**MOTION:** Charles Krueger moved to approve Appeal #16-19. Ross Portolese seconded; motion carried with a vote of 4-0.

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**APPEAL #16-20** An appeal submitted by Martin's Super Markets, LLC, requesting a Use Variance for **304 North Ironwood Drive** to permit a drive-thru for coffee shop in the C-1 General Commercial District.

Jeff Ballard, Danch, Harner & Associate, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellant. He said Martin's is renovating their coffee shop and will be building a small addition on the northwest side of the building under an existing 6' X 13' canopy. Mr. Ballard said the ordering point will be the northwest part of the building. Additional striping will be placed for a three car queue and signage will be placed to maneuver the vehicles and protect pedestrians. They're not creating a need for additional parking spaces.

Mr. McCampbell asked if they had reviewed the conditions of approval. Mr. Ballard said yes and they're fine with them.

Mr. Portolese asked if cars would have to go onto the sidewalk to pick up coffee. Mr. Ballard said no, it will be pushed out far enough for the queue lane. There's no sidewalk in that area.

Mrs. Wells asked when picking up coffee order will you have to drive where pedestrians will be going into the store and will it be safe for pedestrians? Mr. Ballard said yes and yes.

Mr. McCampbell closed the Public Hearing on Appeal #16-20.

**Staff Recommendation**

*Staff recommends approval of Appeal 16-20 to allow a drive-thru window to serve an existing coffee shop in a supermarket located at 304 and 314 N. Ironwood Drive with the following conditions:*

- 1) *The drive-thru use shall be limited to the coffee shop.*
- 2) *An administrative site shall be submitted for review and approval prior to obtaining any required improvement location and/or building permits.*

*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 use will adhere to all local and state building codes and appropriate pavement markings and signage will be installed on site where necessary to facilitate safe vehicular and pedestrian circulation throughout 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 the existing primary use of the property as a supermarket with coffee shop will not be altered and no significant improvements to the existing building and site are proposed.*
3. *The need for the variance arises from some condition peculiar to the property involved because the current zoning allows for a supermarket (grocery store) and restaurant, but prohibits a drive-thru use. Rezoning to the appropriate zoning classification with the allowable uses would not be appropriate for this location;*
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. The zoning ordinance does not allow a restaurant with a drive-thru in the C-1 General Commercial District. Recent development trends in supermarkets are to provide additional services and retail items, such as banks, pharmacies, and small sandwich type restaurants and coffee shops, many of which provide a drive-thru for the convenience of the customers. Approval of this use variance will allow the appellant to remain competitive and consistent with the development patterns of other supermarkets in the area that have been granted similar variances to allow drive-thru uses; and*
5. *The approval is consistent with the recommendations of the Comprehensive Plan for General Commercial development for this site.*

**MOTION:** Ross Portolese moved to forward Appeal #16-20 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-0.

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**APPEAL #16-21** An appeal submitted by JMB Company, LLC, requesting various Developmental Variances for building height, parking, landscaping, for a proposed hotel at **211 East Day Road.**

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, IN, appeared on behalf of the Appellant. He said JMB Company is the contingent purchaser of the property and they are requesting variances for building height and reduction in landscaping.

Mr. Ballard said the site is the existing Honkers restaurant and JMB Company wants to build a 72,000 sqft, 4-story hotel with 126 rooms. He said they have met the 129 required parking spaces. Access to the site will be thru a new curb cut on Day Road and the existing entrance will be eliminated.

Mr. McCampbell closed the Public Hearing on Appeal #16-21.

**Staff Recommendation**

*Staff recommends approval of Appeal 16-21 to allow for the following variances:*

- 1. Variance to allow a hotel with a maximum height of four (4) stories or 55 ft.*
- 2. Variance to allow a reduction in the interior parking landscaping area from the required 1,845 sq. ft. to the area as shown on the preliminary site plan.*
- 3. Variance to allow a reduction in the required side (east) yard landscaping from a minimum of one tree per 60' for overstory trees, or one tree per 40' for understory, to the landscaping as shown on the preliminary site plan.*

*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 requested variances sought are consistent with other variances approved for the adjacent, and similar hotels throughout the city, in regards to increased building height and a reduction in the required landscaping;*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because denial of the proposed variances would not allow the Appellant to be competitive and consistent with the development patterns of other hotels in the area that have been granted similar variances, including the adjacent hotel to the east.*

**MOTION:** Marcia Wells moved to approve Appeal #16-21. Ross Portolese seconded; motion carried with a vote of 4-0.

**ADJOURNMENT:** 6:25 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner