

**JULY 12, 2016**

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, July 12, 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, and Marcia Wells. Absent: Ross Portolese. 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 June 14, 2016, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #16-22**

An appeal submitted by Donald L. Klotz and Larry and Freda Scheibelhut requesting a Developmental Variance for **205 West LaSalle Avenue** to permit a house on Lot 53 with a 12' exterior side yard setback.

Larry Scheibelhut, 51925 Elm Road, Granger, said his family owns the property on the southwest corner of Main and McKinley. He said there's been talk of selling the property in which case it would deeply disturb him to see his old homestead, built in 1946, razed. Mr. Scheibelhut said he took this on to save the houses and made an offer to buy the property on LaSalle to move the homes to the 2 lots.

**Opposition**

Andrew Holtz, 219 W. LaSalle, said he lives 3 houses west of the empty lot. He said he has no qualms about the development of that land, but does have an issue with the density of the neighborhood. He said the homes are very tight together.

Mr. Holtz said he has lived in the neighborhood for 15-16 years and this is a business proposal for Mr. Scheibelhut. He and many neighbors are surprised he's putting 2 houses on the lots. Mr. Holtz said when he looks at the density of the neighborhood and the 2 houses each have potentially 4 bedrooms; that puts 16 additional cars on the streets and he has problems with that.

Mr. Holtz also mentioned that when other homes in the neighborhood have been torn down, the sidewalks have never been repaired.

**Rebuttal**

Mr. Scheibelhut said he was born and raised in that neighborhood; in the homes to be moved. He said he also lived on Colfax, just on the other side of the alley for 9-10 years. He said he's planning on tearing down the little house that's already on the property and

has been there since he can remember. Mr. Scheibelhut said the way he sees it, these 2 homes will fit the environment perfectly as there are lots of other Cape Cod style homes in the area. They'll fit well and do nothing but lift up that corner. The house that's there now is only 452 sqft.

Mr. Scheibelhut said he has people interested in purchasing the homes. In fact, his daughter would love to move to Mishawaka from South Bend and send her kids to John Young. He also said he feels it would lift up the values of the neighboring area because the houses to be moved are at least double in value of the house that's there now.

Mr. McCampbell closed the Public Hearing on Appeal #16-22.

**Staff Recommendation**

*Staff recommends approval of Appeal 16-22 requesting a developmental variance from the required 12.5' exterior side yard setback for Lot 53 in Martin's 1<sup>st</sup> Addition to a 12' exterior side yard setback along Elizabeth Street. The variance requested will allow for the relocation of two existing houses currently located at 2201 and 2205 N. Main 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 all state and local building codes and regulations will be adhered to for the relocation of the existing homes;*
- 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 relocated homes will be similar in character to other houses on the block, and the homes are of greater value than the existing structure to be demolished.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Due to the narrowness of the existing lots, the homes could not be relocated without the approval of the requested variance.*

**MOTION:** Charles Trippel moved to approve Appeal #16-22. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #16-23** An appeal submitted by Charles and Sherry Raven requesting a Developmental Variance for **122 West Sixth Street** to permit an oversized accessory structure.

Sherry Raven, 122 W. Sixth Street, said they are asking to add on to their existing garage. She said the door will face Mill Street which dead ends at the tracks. Mrs. Raven said they need extra space as they are getting a car to restore and her nephews use part of their garage to work on their vehicles.

Mr. McCampbell said Staff had noted that the driveway could not be gravel. Mrs. Raven said she was aware of that.

Mr. McCampbell closed the Public Hearing on Appeal #16-22.

**Staff Recommendation**

The Staff recommends **approval** of Appeal #16-23 to construct a 20’ X 28’ addition to their existing 24’ X 30 garage for a total of 1,280 sqft. 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 property is large enough to accommodate a large garage without crowding the property; and
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because while the Appellant could build several 720 sqft structures on his large lot it is more practical to build one large structure to accommodate their vehicles and personal items.

**MOTION:** Marcia Wells moved to approve Appeal #16-23. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #16-24** An appeal submitted by Tony Rucano requesting a Use, Sign, and Developmental Variances for **4601 Grape Road (JMS Plaza)** to permit a church use, larger freestanding sign, and reduced number of parking spaces.

John Piraccini, Coldwell Banker, 1539 N. Ironwood Dr., said he represents Tony Rucano and Vineyard Church. Mr. Piraccini said JMS Plaza was a pioneer in that area on Grape Road and they’ve had to battle with national competition and Barnes & Noble vacated in 2009. Charter Fitness came in and took half of the space. Mr. Piraccini said Vineyard Church is growing on the south side of town and think this building will be a great use for them.

Mr. Piraccini said the sign variance is requested in order to identify that the church is there.

Mr. Piraccini said regarding Staff’s comment about additional parking, the church feels it isn’t needed at this time even though staff recommended it. On Sunday, Bleachers opens about 6:00 p.m.; the grocery store opens at 10:00, and Charter is open all day. Pretty much everything to the back is closed on Sunday (he showed photos taken during a recent Sunday afternoon). Mr. Piraccini said church services will be at 10:15 and they may do something more as it grows. They will also have small groups on Tuesday and Thursday and will probably not be an issue at this point.

Mr. McCampbell closed the Public Hearing on Appeal #16-24.

**Staff Recommendation**

Staff recommends **approval** of Appeal 16-24 for a use variance to allow a church in a multi-tenant commercial building; and developmental variances to allow for a reduction in the number of parking spaces required from 588 to 469 spaces, and an increase in the allowable maximum square footage for a freestanding sign from 99 sq. ft. to 129 sq. ft.

*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 church use is compatible with the adjacent existing commercial, retail, and restaurant uses; an adequate number of parking spaces should be maintained due to different peak hours for the existing and proposed land uses; and the sign will adhere to all building codes during installation and not obstruct views of the motoring public;*
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 as the proposed church use is compatible with the existing land uses, and additional traffic from the church may result in increased business for the current tenants of the plaza. Furthermore, a shortage of parking spaces is not anticipated with the additional use, and the proposed addition to the existing sign will be consistent in size and scale to other freestanding signage in the area.*
3. *The need for the use variance arises from some condition peculiar to the property involved because the current zoning allows for a various commercial uses, but prohibits a church. Rezoning to the appropriate zoning classification with the allowable uses would not be appropriate for this multi-tenant 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 church in the C-2 Shopping Center Commercial District though a church is compatible with many of the permitted uses in this district. Furthermore, the need for more parking is not anticipated due to the church use, and the addition to the existing sign will provide adequate signage for the multi-tenant building; and*
5. *The approval is consistent with the recommendations of the Comprehensive Plan for General Commercial development for this site.*

**MOTION:** Charles Trippel moved to forward Appeal #16-24 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-0.

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**APPEAL #16-25** An appeal submitted by William and Deborah Russo requesting various Developmental Variances for **3303 Lincolnway East (Dairy Queen)** for reduced parking, setbacks, and landscaping.

William Russo, owner of Dairy Queen, said they have been in this building for the past 18 years and it's time to upgrade. It was built in 1970. Mr. Russo also said they've outgrown seating and parking as well. They will tear down and rebuild and give the neighborhood a new look.

Mr. Russo said parking will be added to the east of the building and they are required to keep the drive open from Maplewood, which will take away 3 spots. He said new parking along Lawndale will line up with the existing making a variance required because of landscaping and setback.

Mr. Trippel asked about the timetable. Mr. Russo said hopefully get started in September.

Mr. McCampbell closed the Public Hearing on Appeal #16-25.

**Staff Recommendation**

*The Planning Staff recommends approval of Appeal 16-25 to allow a reduction in the required parking lot setbacks, landscaping, and parking spaces 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. The redesign of the parking lot/drive-thru lane, addition of 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 will add landscaping and a fence to buffer the residential properties to the south.*
- 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 the entire row of parking spaces along Lawndale, further reducing the number of parking spaces provided. The Maintaining the access to Maplewood caused the reduction of parking spaces being requested.*

**MOTION:** Charles Krueger moved to approve Appeal #16-25. Marcia Wells seconded; motion carried with a vote of 4-0.

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**ADJOURNMENT:** 6:20 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner