

OCTOBER 11, 2016

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, October 11, 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, and Marcia Wells. Absent: Don McCampbell and 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.

Mr. Trippel explained the Rules of Procedure.

The Minutes of the September 13, 2016, meeting, were approved as distributed.

Conflict of Interest was not declared.

**PUBLIC HEARING:
APPEAL #16-35**

An appeal submitted by Empire Petroleum Partners requesting a Sign Variance for **1831 East Day Road** to permit signs that project above the fuel pump canopy.

Allan Svihlik, Paragon Installations, 3313 E. 83rd Place, Merrillville, IN, presented the request. He said this request is like the others approved recently in that the Phillips 66 "shield" will project above the gas pump canopy.

Mr. Trippel closed the Public Hearing on Appeal #16-35.

Staff Recommendation

The Staff recommends approval of Appeal 16-35 to allow three (3) Phillips 66 "shields" to project 16.2" above the gasoline pump canopy. 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 the canopy and will not be consistent with national corporate branding.*

MOTION: Charles Krueger moved to approve Appeal #16-35. Marcia Wells seconded; motion carried with a vote of 3-0.

APPEAL #16-36 An appeal submitted by The Plaza Phase III, LLC, requesting a Sign Variance for **1736-1820 East Day Road** to permit an additional freestanding sign.

Steve Murphy, 4202 Cottage Avenue, Mishawaka, member of Plaza III LLC, 4715 Lincolnway East, said they are requesting an additional sign to be installed at the complex.

Mr. Murphy said there are three buildings in the phase of the project and they are requesting a sign which is the exact duplicate of the existing sign. He said it was always their intent to have two signs at this phase of the project. Mr. Murphy said it makes sense as it will be balanced and aesthetically pleasing.

Mr. Trippel closed the Public Hearing on Appeal #16-36.

Staff Recommendation

*The Staff recommends **approval** of the second sign variance. 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. The distance from the driveway will not obstruct site distance when entering or exiting the site;*
- 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 there are two separate buildings, so two signs are expected and the parcel line is not visible at the site. The new sign will be aesthetically pleasing and match the existing sign;*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because the overlay restricts the size of the sign, the existing sign cannot be made larger. The new building and each tenant should be provided adequate signage.*

MOTION: Marcia Wells moved to approve Appeal #16-36. Charles Krueger seconded; motion carried with a vote of 3-0.

APPEAL #16-37 An appeal submitted by Sharon Brock requesting a Developmental Variance for **1803 East McKinley Avenue** to permit a garage addition with a 0' exterior side yard setback.

Kerry Richards, 127 Spruce Street, South Bend, appeared on behalf of the Appellant. He said they are asking for a variance to build a 14' X 16' garage addition.

Mr. Trippel closed the Public Hearing on Appeal #16-37.

Staff Recommendation

*The Staff recommends **approval** of Appeal #16-37 to construct a garage addition with a 0' exterior side yard setback. 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 addition will not project any closer to the property line than the existing garage; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the existing garage has a non-conforming setback and any new addition to the garage would require a variance.*

MOTION: Charles Krueger moved to approve Appeal #16-37. Marcia Wells seconded; motion carried with a vote of 3-0.

APPEAL #16-38 An appeal submitted by Joseph Chowattukunnel requesting a Use Variance for **3925 Fir Road** to allow lawn mower repair and resale on an I-1 Light Industrial zoned property.

Martha Guerra, 414 Blaine Avenue, South Bend, said it's her and her husband's lawnmower repair business at 3925 Fir Road. She said they were located on Jefferson in Mishawaka, but they outgrew the building and it was being sold. Mrs. Guerra said they have leased the whole property and they will not rent out any of the other units.

Mr. Trippel asked if they purchased the property. Mrs. Guerra said no, they leased it for three years.

Mr. Prince said conditions include no outside display of merchandise except during business hours, no storage of inoperable equipment or parts.

Mr. Prince read a letter of support from Mathew and Rose Kallookulangara, 4007 Fir Road.

In Favor

William Stockton, 3822 Savannah Pass, said he lives behind and to the south of the property. He said he spoke to the owner and he likes that there will be no outside storage.

Mr. Stockton asked if after the end of the three-year lease, what other businesses could be there. Mr. Prince said it's zoned Light Industrial, so uses similar to the property across the street. He said the City has seen a lot of commercial growth and over time, it may be torn down and rezoned.

Mr. Trippel closed the Public Hearing on Appeal #16-38.

Staff Recommendation

*The Staff recommends **in favor** of Appeal 16-38 for a use variance to allow mower/outdoor equipment repair and resale in an existing self-storage facility located at 3925 Fir Road subject to the following conditions:*

1. *The use variance shall be limited to small outdoor equipment repair and resale, including but not limited to mowers, weed trimmers, edgers, and snow and leaf blowers.*

2. *Outside display of merchandise is permitted only during the hours of operation of the business.*
3. *No outside storage of inoperable equipment, materials and/or parts will be permitted.*

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 and residential uses. A large physical separation and buffering is present between the existing building and adjacent properties. Furthermore, the use will not significantly increase traffic along Fir Road. All environmental regulations pertaining to the use will be followed.*
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 due to the large separation and existing mature trees and vegetation between the use and adjacent residential properties. Other commercial and industrial uses are present along Fir Road and Day Road to the north. Additionally, industrial uses that would be more intensive than the proposed use are currently permitted on the property.*
3. *The need for a use variance arises from some condition peculiar to the property involved because the current zoning permits various more intensive industrial uses, but prohibits the less intensive mower/outdoor equipment repair and resale use. A use variance would allow the proposed use, while maintaining the industrial zoning should the use of the structure ever revert to a self-storage facility as originally designed.*
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 mower/outdoor equipment repair and resale use.*
5. *Although the proposed use is not consistent with the recommended industrial use as identified in the 2000 Mishawaka Comprehensive Plan, mower/outdoor equipment repair and resale is a desirable and less intensive use of the property and consistent with the goals and objectives of the Comprehensive Plan.*

MOTION: Marcia Wells moved to forward Appeal #16-38 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 3-0.

APPEAL #16-39 An appeal submitted Mike Sanders and Sydwell LLC requesting a Sign Variance for **509 West McKinley Avenue** to permit an oversized freestanding sign.

Garry Potts, Professional Permits, 58171 Dragonfly Court, Osceola, appeared on behalf of the Appellants. He said the Appellants desire to utilize the existing support structure and replace the sign cabinet. He said the sign will remain at 25' overall height and the sqft would be reduced from 140 to 110 sqft.

Mr. Krueger asked if it would be similar to the existing sign. Mr. Prince said it's a reduction, and the general idea is it's non-conforming but the new sign reduces that size. It is smaller and we want to provide an incentive to bring into compliance over time. He said 10-20 years down the road, we would ask for another adjustment.

Mr. Krueger said there are a lot of older signs along McKinley that are not in compliance. Mr. Prince said Arby's and Town & Country Shopping Center signs are historic.

Mr. Trippel closed the Public Hearing on Appeal #16-39.

Staff Recommendation

*The Staff recommends **approval** of the height, display area and copy area variances. 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 getting smaller, and will be aesthetically pleasing sign compared to the existing sign;*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because the face of the sign could be replaced maintaining the much larger square footage, however the design of the existing sign is dated and does not meet the current business's needs.*

MOTION: Charles Krueger moved to approve Appeal #16-39. Marcia Wells seconded; motion carried with a vote of 3-0.

NEW BUSINESS

Mr. Prince said our normal Tuesday November meeting is election day. He said the Common Council has rescheduled their meeting for Wednesday, November 9. Mr. Prince said he's looking for suggestions.

Mr. Trippel said the BZA will go along with Plan Commission decision.

ADJOURNMENT: 6:20 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner