

JANUARY 10, 2017

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, January 10, 2017, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Trippel, Don McCampbell, Ross Portolese, and Marcia Wells. Absent: Charles Krueger. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

The meeting was turned over to Ken Prince for the election of officers.

ELECTION OF OFFICERS:

MOTION: Charles Trippel moved to nominate Don McCampbell as Chairman. Ross Portolese seconded; motion carried with a vote of 3-0.

MOTION: Ross Portolese moved to nominate Charles Trippel as Vice-Chairman. Don McCampbell seconded; motion carried with a vote of 3-0.

Mr. McCampbell explained the Rules of Procedure.

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

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #17-01 An appeal submitted by LeHue Realty LLC requesting a Use Variance for **1915 North Cedar Street** to permit an auto body shop, auto repair, and detailing on I-1 Light Industrial zoned property.

Lincoln LeHue, 1915 N. Cedar Street, Mishawaka, said his prospective tenants were fine people and would be proud to have them as family. He said they would run a respectable business and abide by the rules.

Mr. McCampbell asked if the prospective tenants would be running a body shop. Mr. LeHue said yes.

Mr. McCampbell asked Mr. LeHue if he had seen the conditions of approval by staff. Mr. LeHue said there were past conditions.

Mr. McCampbell asked if he had seen the conditions on the current staff report. Mr. LeHue said yes.

Mr. McCampbell asked Mr. LeHue if he was willing to comply with the conditions. Mr. LeHue said he wanted to read the conditions in the staff report.

Mr. LeHue said they have had complaints about parking lot lights. Do they want lights? Mr. Prince said lighting is required for any paved area. He said the issue is glare and they have to be a cut-off fixture pointing down. Mr. LeHue said he would comply.

Mr. McCampbell asked if he agreed with conditions 1-4. Mr. LeHue said yes.

Opposition

Jeff Wisler, 1905 Margaret Avenue, said he lives a rock's throw from the building. He said he has lived in his house for 20 years and up until the last 2-3 years, they have never had a problem. He said they've had great tenants and neighbors in the I-1 zoning over the years. They have been polite and respectful of the neighborhood. Mr. Wisler said they keep regular business hours and it's a blessing.

Mr. Wisler said Mr. LeHue has done a better job in regards to what has happened in the past. There have been issues last fall into the winter and police have been called on different occasions, as has the owner. He said the caliber of tenants have a lack of respect for the neighbors. Mr. Wisler said he isn't opposed to business, but it seems the businesses here start when others have closed and go on until 2:00 a.m. He said he has seen shipments of cars in bay 1 and it seems there are already prospective leasers in there now.

Mr. Wisler said he has heard air wrenches being used and said work mostly starts at 5:00 p.m. with music. He said neighbors across the street from him have called police because of the noise.

Mr. Wisler asked if the neighborhood would benefit from another auto body shop. No, you can go 2 minutes in either direction and have a plethora of them. This is about quality of life and respect of neighbors.

Mr. McCampbell said the staff has placed conditions on the hours of operation from 7:00 a.m. to 8:00 p.m. Mr. Wisler asked who would enforce that. He said they did call the police and had a long conversation with them and they said they don't enforce restrictions in zoning.

Mr. McCampbell suggested they call Code Enforcement. Mr. Wisler said at 2:00 a.m.? He said that's what they are up against. Police already said they can't force the time and it's their lives being impacted.

Matthew Kopey, 1823 Margaret Avenue, said he could attest to the noise coming from the location. He said he's heard random machine grinding, loud bass music at all hours. He said when this variance takes effect more variances will come into place and affect the value of their homes and reduce any asking price if they want to sell. This doesn't help their neighborhood in any way. Any noise affects his family.

Christine Hall, 1822 Margaret Avenue, said she's been there 28 years and up until last year, hasn't had any problems with the businesses along Cedar. She said as recently as October 17 they called the police at 11:50 p.m. and her windows were rattling due to loud music; and her windows were closed. She gave the dispatcher the address and they immediately recognized it as the auto body shop. Ms. Hall said four policemen came within 2-3 minutes and were there 30 minutes. She said she backs up what other residents have said.

Mr. Prince read a Letter of Remonstrance from Jan Winn, 1913 Margaret Avenue.

Rebuttal

Mr. LeHue said the police doesn't inform him of anything. He said they have a fine department, but are limited.

Mr. LeHue said there was an incident where a tenant notified him of a problem and he went to the site. The police also told him there wasn't anything they could do.

Mr. LeHue said there's been one person to call him since the last meeting. He said they called on a Sunday morning about loud music and he drove to the business and told the people to fix the problem or they would have a new address.

Mr. LeHue said from what he's heard tonight, no one is willing to give him a second chance. He said he received a letter from Code Enforcement telling him to shape up or they would fine him. He said he feels he needs another chance.

Mr. McCampbell closed the Public Hearing on Appeal #17-01.

Mr. Portolese asked if we've had the same problems with this business before. Mr. Prince said yes, about 2 years ago. He said they made a similar request then and Council denied it. Now they are asking again.

Mr. Portolese asked if they are continuing to have violations. Mr. Prince said yes, and staff struggles with the use but it's hard to recommend in favor and it's also hard to enforce the hours of operation. We really don't want to be in business to do that.

Mr. Prince said the other this is the Use Variance is only for auto uses and not sure who the other tenants are.

Staff Recommendation

Despite the violations, the Staff feels this is an appropriate use given its proximity to the railroad tracks and other automotive uses, therefore, the Staff recommends in favor of Appeal 17-01, a use variance for automotive body shop, auto shop, and auto detailing uses at 1915 N Cedar Street, subject to the following conditions:

- 1. Use variance shall be limited to automotive body shop, auto shop, and auto detailing and shall be limited to indoors. No outside storage of inoperable vehicles, materials and/or vehicle parts will be permitted;*
- 2. A site plan shall be submitted to the Department of City Planning showing proposed parking layout in regards provided parking space per use.*
- 3. Temporary signage is prohibited.*
- 4. Any noise generating activities shall be restricted to the hours of 7am-8pm.*

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 industrial nature of the area along Cedar Street.*
3. *The need for a 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 north and south.*
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 given the existing auto commercial uses that are located to the south of this property along Cedar Street.*

MOTION: Charles Krueger moved to forward Appeal #17-02 to the Common Council with an unfavorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-0.

APPEAL #17-02 An appeal submitted by Rans Real Estate LLC requesting a Use and Developmental Variance for **3634 and 3708 Hickory Road** to permit an assisted living facility with a reduction of parking spaces in R-3 Multi-Family Residential District.

Ari Parritz, Vermillion Development, 401 N. Franklin Street, Chicago, appeared on behalf of Rans Real Estate. He said they are proposing to build a 119-unit assisted living community. The Use Variance is to permit the assisted living component and a Developmental Variance for a reduction in parking spaces.

Mr. Parritz said they have been around since the mid-2000's and they opened their first facility in Peoria in the fall and have others under construction in Indiana. He said they recently went through a similar process in Evansville.

Mr. Parritz said the community will have one-bedroom and studio units with assistance with daily activities, if needed. He said they are apartment style and not shared rooms. Each tenant has their own room and shared access to amenities.

Mr. McCampbell closed the Public Hearing on Appeal #17-02.

Staff Recommendation

*Staff recommends **approval** of Appeal 17-02 requesting a use variance for property located at 3708 and 3634 Hickory Road to allow a 119 unit assisted living facility in an R-3 Multiple Family Residential District (rezoning pending) and a developmental variance for a reduction in the required number of parking spaces to 60 spaces.*

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 senior assisted living facility is compatible with the adjacent commercial/retail uses and is similar in intensity and use to other permitted uses in the R-3 Multiple Family District. Based upon the developer's*

experience with similar assisted living facilities, the reduction in the required number of parking spaces will provide an adequate number of spaces for the residents, employees, and guests;

- 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 assisted living facility is compatible with the existing land uses. Furthermore, the proposed use is less intensive and will not generate as much traffic as many of the permitted uses allowed on the property. Adequate parking will still be provided with the reduction in the number of spaces.*
- 3. The need for the use variance arises from some condition peculiar to the property involved because the proposed zoning allows for various multiple family residential and senior care uses, but does not explicitly permit an assisted living facility.*
- 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 an assisted living facility in the R-3 Multiple Family Residential District though such a use is similar to many of the permitted uses in this district. Furthermore, the number of parking spaces required per ordinance is excessive since many of the facility's residents no longer possess or drive automobiles.*
- 5. The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. Although more residential in nature, the proposed use for an assisted living facility is consistent with the Comprehensive Plan.*

MOTION: Ross Portolese moved to forward Appeal #17-02 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-0.

APPEAL #17-03 An appeal submitted by John and Mary Christianson requesting a Sign Variance for **1512 E McKinley Avenue** to allow an oversized freestanding sign.

Garry Potts, Professional Permits, 58171 Dragonfly Court, Osceola, appeared on behalf of the Appellants. He said they are requesting to use the existing support structure and replace the manual copy board with a new electronic message board. Mr. Potts said the total sqft of the sign will be reduced to 205 sqft from 248 sqft and the copy area reduced to 142 sqft from 174 sqft.

Mr. Potts said the approval won't be injurious to the public or community. He said the existing sign is old and to the best of his and staff's knowledge is grandfathered. The adjacent area will also be improved by the sign and if required to adhere to the sign ordinance would be difficult for motorists to find the business.

Mr. McCampbell asked if the "Thomasville Gallery" sign would be removed. Mr. Potts said yes.

Mr. McCampbell closed the Public Hearing on Appeal #17-03.

Staff Recommendation

The Staff recommends **approval** of the 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 nameplate already exceeds display and copy area allowed per ordinance, but the overall display and copy areas are being reduced.

MOTION: Charles Trippel moved to approve Appeal #17-03. Ross Portolese seconded; motion carried with a vote of 4-0.

NEW BUSINESS:

Mr. Prince said Ross Portolese has advised he will be stepping down. Mr. Prince said he has appreciated Ross’s input and guidance over the years. He said he’s truly one of the forefathers of the City.

Mr. Portolese said it has been a pleasure to serve and see Mishawaka grow.

ADJOURNMENT: 6:35 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner