

**FEBRUARY 13, 2018**

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, February 13, 2018, 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 Larry Stillson. In addition to members of the public, the following were also in attendance: Ken Prince, Derek Spier, and Kari Myers.

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

**ELECTION OF OFFICERS:**

**MOTION:** Charles Krueger moved to nominate Don McCampbell as Chairman. Marcia Wells seconded; motion carried with a vote of 3-0.

**MOTION:** Charles Krueger moved to nominate Charles Trippel as Vice-Chairman. Marcia Wells seconded; motion carried with a vote of 3-0.

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Mr. Trippel explained the Rules of Procedure.

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The Minutes of the December 12, 2017, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #18-01** An appeal submitted by Larry and Nancy Wolfe requesting a Sign Variance for **928 East McKinley Avenue (Blue Lantern Restaurant)** to allow an oversized freestanding sign.

Larry Wolfe, owner Blue Lantern, 928 E. McKinley Avenue, Mishawaka, said he is asking for a sign variance. He said he's too old to change the letters on the sign and wants to put up an electronic sign.

Mr. Krueger asked if the sign will display time and temp. Mr. Wolfe said no, he's just interested in advertising.

Mr. Prince said the sign will have the ability to display time and temp, but Mr. Wolfe is only interested in advertising and it will have a changing message.

Mr. Trippel closed the Public Hearing on Appeal #18-01.

Mr. Prince said with the modification, staff feels it bring the sign more into compliance and into modern day technology.

### 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 existing sign already exceeds display and copy area allowed per ordinance, but the overall display and copy areas are being reduced.

**MOTION:** Mr. Krueger moved to approve Appeal #18-01. Marcia Wells seconded; motion carried with a vote of 3-0.

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**APPEAL #18-02** An appeal submitted by Ronald E. and Diana L. Quandt requesting a Use Variance for **1200 West Sixth Street** to allow car repair/body and paint shop, and beauty shop on I-1 Light Industrial zoned property.

Ronald and Diana Quandt, 17680 Hansom Ct., South Bend, IN, said he's owned the property since 2004 and has tried the lease the building in several different fashions, but with no luck. He said they have someone to lease the building contingent on this variance being approved.

Mr. Quandt said the building is located in a transitional area; on the edge of it. He said his concern is there are four commercial properties on Sixth Street that are empty and unfortunately vandalism is a problem when empty and drive down the value of the area and starts affecting home value. Mr. Quandt said when you drive down assessed value it reduces taxes.

Mr. Quandt also said the beauty shop use is no longer an issue due to the 60 day delay the person couldn't wait and had to make a move.

Mr. Quandt said he wanted to point out a few things. He said the only use between Logan and Sixth Street is a beauty shop and is probably zoned commercial. Not sure what everything else is zoned. He said his property is surrounded on the west by rental property, not residential but a 3-unit apartment; residential to the east and alley and railroad right-of-way behind. He said he feels this business could operate there and not interfere with the community and thinks it would be an asset.

Mr. Quandt said in 2004 they were granted a Use Variance for storage units, but the economy went south and they weren't doing a lot of business with the rentals as they were in the garage door business. He said they went through some tough times with their employees only working 30-32 hours per week for 4-5 years and they elected not to go in and develop the eastern half of their property. Mr. Quandt said he developed about 18 units within the building and rented those periodically. He hasn't done much lately as he's trying to do something more permanent with the building.

Mr. Quandt said they have made improvements and have done what they said they would do except expand the eastern section as he felt it wasn't the right thing to do with the economy. He said the property really isn't big enough for rental units.

Mr. Trippel asked Mr. Quandt to keep to the topic of what was being asked for this evening; the auto use. Mr. Quandt said it's a custom paint shop and has been in Mishawaka about 15 years; Alex Jones.

Mr. Trippel asked if he was in business now. Mr. Quandt said yes.

Mr. Trippel asked where. Mr. Quandt said 428 S. Byrkit Avenue and he's looking to have a place with a paint booth. He said there's no concern about fumes if you have a paint booth. He said the business is Competitive Custom Painting and it's not the typical paint and body shop that replaces a fender and just matches the rest of the car. Mr. Quandt said he usually does the whole car and does good work.

Mr. Quandt said they put up a fence and some landscaping along the south side and southwest corner and the northeast corner of the building and some climbing roses on the east.

### **Opposition**

Gwendolyn Lewis, 1210 W. 7<sup>th</sup> Street, said she's against the use due to potential environmental issues such as storage of oil, solvents and paint, and the risk. She said also due to increased traffic and parking issues as parking is allowed on one side of the street only. She said there is another auto repair place down the street, Piepers, and the lot is always full and the overflow cars and employees park on the street and deliveries are often made on the restricted side of the street.

Ms. Lewis said she is also concerned about noise pollution as they frequently hear noises from the other body shop about a block away.

William Liskow, 1024 W. 6<sup>th</sup> Street, said he lives 4 houses down and now they are looking to have 2 body shops in the neighborhood. He said he's complained to Code Enforcement because 4<sup>th</sup> and Smith Streets looks like a junkyard and they also hear noises from them.

Mr. Liskow said there is also congestion on the street as there are two beauty shops nearby and it's hard to get around.

Mr. Liskow asked about paint residue? And he doesn't think we need more congestion in the neighborhood.

### **Rebuttal**

Mr. Quandt said as far as parking is concerned; it's never been a problem and they have a fence in front of the property so there will be no parking on the street. He said he thinks that's a concern that isn't valid.

Mr. Quandt said he hopes you don't compare his request with other areas because of others abusing what they said they would do. He said he thinks he's been a good neighbor as he's fixed up the building, roof, mechanicals and doesn't think smells will be an issue. Mr. Quandt said as far as noise, there are 25 trains that go by all day and all work will be done inside the building and the neighbors have the wrong conception that there's going to be a lot of cars, there won't be, they will be inside as he has lots of room.

Mr. Quandt said parking hasn't been a problem because they have to get inside. There's plenty of area and won't be that many cars.

Mr. Quandt said they are in full agreement if you recommend approval with any suggestions of what he needs to do.

Mr. Trippel closed the Public Hearing on Appeal #18-02.

Mr. Prince said staff recommends denial due to the past uses nearby. However, he did say that a machine shop could go into this building without a variance and would generate noise and parking issues.

### **Staff Recommendation**

*The Staff recommends **denial** of Appeal 18-02 to allow an automobile service, body, and paint shop, and at 1200 W. 6<sup>th</sup> Street.*

*This recommendation is based on the following reasons:*

- 1. The approval for an automobile service, body and paint shop will be injurious to the public health, safety, morals, and general welfare of the community as these proposed uses, and potential expansion thereof, will have a negative impact on the surrounding residential uses.*
- 2. The use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner if the proposed automotive uses are permitted.*
- 3. The need for the use variances arise due to the existing zoning classification not allowing for the proposed uses.*
- 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 for the automobile service, body and paint shop will interfere substantially with the goals and objectives of the Mishawaka 2000 Plan as these uses are not compatible in a primarily single-family residential neighborhood.*

**MOTION:** Marcia Wells moved to forward Appeal #18-02 to the Common Council with an unfavorable recommendation. Mr. Krueger seconded; motion carried with a vote of 3-0.

**APPEAL #18-03** An appeal submitted by Gage Realco, LLC, requesting various Developmental Variances for **3805 Lincolnway East** to reduce pavement setback and to allow an existing fence.

Greg Shearon, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellant. He said the Appellant recently rezoned the property to C-9 for auto sales and when the property changes use it's required that it be brought into compliance with the Zoning Ordinance; and in this case it's the setback along Lincolnway and Ray Street. Mr. Shearon said they are requesting a 6' setback to allow a little more room to move cars throughout the site.

Mr. Shearon also said the Ordinance requires a 7' fence and they are asking for the existing 6' privacy fence to be allowed to remain as they feel it's appropriate and meets the intent of the Ordinance.

Mr. Trippel closed the Public Hearing on Appeal #18-03.

**Staff Recommendation**

*Planning Staff recommends approval of Appeal 18-03 to allow a reduction in the required parking lot setbacks and height of the opaque screening fence for a proposed automobile sales business located at 3805 Lincoln Way East.*

*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. The proposed 6' pavement setbacks along Lincoln Way East and Ray Street will allow provisions for a buffer and landscape area between the property and the public right-of-way. Currently, no such buffer or landscape area is provided. Additionally, the existing opaque fence along the east and south property lines shall continue to provide adequate screening for the site. 2.*
- 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. The reduced pavement setbacks are not contiguous to the adjacent residential uses, and therefore, will not impact the adjacent uses or property values. Furthermore, the existing fence meets the intent of the screening requirements between the site and residentially-zoned properties.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Due to the limited lot area and location of the existing building, adherence to the required 10' pavement setbacks would greatly restrict the use of the property and not allow for adequate vehicular access and parking adjacent to the building.*

**MOTION:** Marcia Wells moved to approve Appeal #18-03. Charles Krueger seconded; motion carried with a vote of 3-0.

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**APPEAL #18-04** An appeal submitted by Phillip Binion, Jr. and Cindy Binion requesting a Developmental Variance for **2327 Normandy Drive** to allow a 15' 6" front yard setback for a front porch.

Philip and Cindy Binion, 1809 E. LaSalle Avenue, said they were requesting approval for the new porch they put on.

Mr. Trippel asked if it was already built. Mr. Binion said yes. He said there was a larger porch and they tore it down because it was dilapidated. He said the Building Department red-tagged it and they immediately started the variance procedure.

Mr. Trippel closed the Public Hearing on Appeal #18-04.

Mr. Prince read a Letter of Support from Dorothy Lane, 2405 Division.

**Staff Recommendation**

*Staff recommends approval of Appeal #18-04 to allow the construction of a 6' X 10' 3 1/2" front porch with a 15' 6" front building 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 were 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 setback is not substantial, is fairly consistent with other homes in the neighborhood, and replaces a dilapidated and unsafe front porch; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the porch will increase the safety and accessibility to the home's main entrance.*

**MOTION:** Charles Krueger moved to approve Appeal #18-04. Marcia Wells seconded; motion carried with a vote of 3-0.

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**APPEAL #18-05** An appeal submitted by Cressy & Everett Management Corp. requesting a Developmental Variance for **2115 East Day Road** to allow a solid fence with a 0' front yard setback.

Brian Harding, 1515 E. Washington Street, South Bend, said 2115 E. Day Road is a maintenance shop. He said they have an existing fence that surrounds the property and they are seeking approval to extend the fence along Day Road.

Mr. Harding said the request is security related as they park vehicles there and have had recent break-ins. He said they are looking at approximately 195' of fencing along Day Road frontage, about 25' back from the roadway and will connect back to the building so the parking lot will be secured. Mr. Harding said there's a fence along the railroad tracks and the north/side line. He said the ordinance permits a 4' fence, but this will be 6' with privacy slats and hopes it will look nice from the road and hide the vehicles behind it.

Mr. Trippel closed the Public Hearing on Appeal #18-05.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal #18-05 to install a 6' high privacy fence in the front yard, with a 5' setback from the property line. 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 fence will be wholly on the owners property and connect existing fencing; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the parking area is closer than 25' to the front property line, placing a 4' high, 75% open fence would not provide the security required.*

**MOTION:** Marcia Wells moved to approve Appeal #18-05. Charles Krueger seconded; motion carried with a vote of 3-0.

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**APPEAL #18-06** An appeal submitted by Steve Stacy requesting a Developmental Variance for **302 East Russ Street (Thai Lao Restaurant)** to allow for a 2' 6" exterior side yard setback for building awnings.

Jacquelyn Beals, 320 Oregon Avenue, Osceola, said they are requesting a variance from the side property line.

Ms. Beals said the owner (who is present) has contracted with them to install new awnings for the protection of the patrons. She said the building is already too close to the property line and the variance will allow the new awnings.

Mr. Trippel closed the Public Hearing on Appeal #18-06.

**Staff Recommendation**

*The Staff recommends **approval** of the setback 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;*
- 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 awning will be aesthetically pleasing and provide protection for customers upon entering and exiting the door;*
- 3. Strict application of the terms of the Zoning Ordinance will result in practical difficulty because the building already encroaches into the exterior side yard setback, so any addition would require a variance.*

**MOTION:** Charles Krueger moved to approve Appeal #18-06. Marcia Wells seconded; motion carried with a vote of 3-0.

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**APPEAL #18-07** An appeal submitted by John and Jennifer Pieper requesting a Use Variance for **1802 West Sixth Street** to allow for an expansion of automobile repair use.

Jennifer Pieper, 1802 W. Sixth Street, said they are trying to expand the fenced area to park additional cars. She said John was ill and couldn't attend tonight's meeting.

Mr. Prince said as part of the staff recommendation, they've been in several times, once to expand or clarify the previous variance. He said last summer, the Council had a meeting to revoke the variance and there were many supporters of Piepers and staff came up with a reasonable solution to address the parking situation. Mr. Prince said that included a long-term staging area for vehicles tied up in insurance matters and they could be there months or longer. He said staff's thought was to provide a gravel storage area as that gives them an opportunity to store cars waiting for improvements rather than be on or near the street. He also said they have clarified conditions to provide ways to stage vehicles.

Mr. Trippel closed the Public Hearing on Appeal #18-07.

Mr. Prince read a Letter of Remonstrance from Jack Niver, 1809 W. 6<sup>th</sup> Street.

### **Staff Recommendation**

*The Staff recommends approval of Appeal #18-07 to expand the automotive body repair/maintenance business at 1802 West Sixth Street to Lot 65 to the east, subject to the following conditions:*

- 1. Use Variance shall be limited to automotive body repair and automotive maintenance is limited to indoors. No outside storage of materials and/or vehicle parts will be permitted. Salvage of parts and storage of non-repairable vehicles are prohibited. Disabled cars may be held on a temporary basis to resolve insurance related claims within the designated long term storage area. No parts or other outside storage is permitted within this area;*
- ~~2. The previously submitted landscape plan plantings shall be installed and the building shall be painted in 2012~~*
- 3. Exterior lighting shall be provided within the gated parking area. If lighting is not a cut-off type fixture, direct lighting away from residential properties.*
- 4. All employees shall park within the fenced area on the property when possible, and not on adjacent streets. When employees do park on adjacent streets, the owner shall coordinate with adjacent residents and make accommodations to move vehicles as may be necessary so that public parking spaces remain available along the street. Cars waiting on repair and pick-up, shall not be stored in the street where they are located there overnight.*
- 5. No car repairs shall be permitted outside of the enclosed building. Streets and sidewalks shall not be used for the staging or repair of vehicles. Sidewalks shall not be blocked by parked unoccupied vehicles.*
- 6. Overnight parking in the fenced lot adjacent and visible to the street shall be limited to the temporary staging of cars being worked on. This lot shall not be used for the long term storage of vehicles. Within this parking area, a minimum of five parking spaces shall be reserved for continually rotating customers.*
- 7. Hours of operation for repair work that creates noise that can be heard outside the building shall be limited to between the hours of 7:30am and 8:00pm.*
- 8. Freestanding Signage on the site is limited to one non-internally illuminated monument style sign (up lighting is permitted) with a display area of no greater than four (4) feet high by eight (8) feet wide/ 32 square feet, and with a total sign height not to exceed five (6) feet and with permits secured from Building and Planning Departments;*
- 9. Temporary signage, other than directional signs, is prohibited. Directional signs shall be placed as necessary to mark designated customer and employee parking areas on site. Rigid directional signs may be located on fencing.*
- 10. A long term storage area shall be created on the east side of the building between the current parking area and the alley. This area shall be completed by July 1, 2018. Long term storage is meant for the storage of cars with pending insurance litigation issues or other related issues that require them to be stored for weeks or months. Parking in this area should not exceed 18 months for any one individual vehicle. This area shall be fenced with an opaque fence that is 8' high. The surface of the area may be gravel or hard paved. Hard paving or other improvements shall be accomplished as necessary to prevent the migration of gravel on West 6<sup>th</sup> Street. At a minimum, one dry well shall be provided for this area. Surface drainage from this area shall be directed toward the drywell and away from neighboring property.*
- 11. The future short term storage area, if constructed, shall be paved and shall be required to meet all C-1 general commercial standards, including but not limited to, landscaping and drainage.*

*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 expansion will have no additional impact on the surrounding commercial and residential uses that currently exist. 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 mixed commercial/industrial/residential nature of the area along the railroad tracks. The revised conditions will also ensure that the business will not negatively affect the residential neighborhood to the south and north;*
- 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. Previous resolutions allow the existing automobile use. The expansion will alleviate some of the on street parking and storage problems currently affecting the business while still protecting the industrial zoning for future use and also protecting the neighboring residential users;*
- 4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the previously approved Resolutions do not include Lot 65, therefore denying the use of that lot for the automobile/commercial use;*
- 5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies the site as Industrial surrounding areas as Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.*

**MOTION:** Marcia Wells moved to forward Appeal #18-07 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion fails with a vote of 2-1 (Trippel). Appeal #18-07 goes to the Common Council with *no* recommendation.

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**ADJOURNMENT:** 6:40 p.m.

Kenneth B. Prince /s/  
Kenneth B. Prince, City Planner

Kari Myers /s/  
Kari Myers, Administrative Planner