

JUNE 12, 2018

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

The regular meeting of the Mishawaka Board of Zoning Appeals will be held Tuesday, June 12, 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, Don McCampbell, Marcia Wells, and Larry Stillson. In addition to members of the public, the following were also in attendance: Ken Prince, David Bent, Derek Spier, Christa Hill, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the May 15, 2018, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #18-15

An appeal submitted by Marianne Parker, owner, and Donald Mawhorter, purchaser, requesting a Use Variance for **426 East Mishawaka Avenue** to allow a residence in C-1 General Commercial zoning, and a Developmental Variance for a reduction in parking spaces for a new restaurant.

Donald Mawhorter, Scoobies, 223 N. Main Street, Mishawaka, said they were asking for variances for parking and to use the house as residential.

Mr. Krueger asked if there was any parking. Mr. Mawhorter said no, they would park on the side street which is Locust.

Mr. McCampbell asked if parking in the driveway was the only parking. Mr. Mawhorter said yes, there is no parking lot and would like to park on the side street.

Mr. Stillson asked how would deliveries be made. Mr. Mawhorter said deliveries would be made using the side door.

Mr. Stillson asked if trucks can use the side door. Mr. Mawhorter said they usually only have two truck deliveries per week as he picks up most items himself from Gordon's Food Service.

Mr. Stillson asked how many employees were there. Mr. Mawhorter said there are never more than five employees where they are now.

Mrs. Wells asked if they had much parking where they are now. Mr. Mawhorter said he shares parking with the barber shop and Buzz's. There is City parking behind the building which works out fairly well, but it gets a little crazy in the winter with the snow.

Mr. Stillson asked if the current location had parking behind the building. Mr. Mawhorter said yes.

Mr. Krueger asked about hours of operation. Mr. Mawhorter said 10:30 a.m. to 5:00 p.m. on Monday and Tuesday, 10:30 a.m. to 8:00 p.m. Wednesday thru Friday, and 11:00 a.m. to 4:00 p.m. on Saturday.

Mr. Krueger asked about capacity for dine in customers. Mr. Mawhorter said they have a combination of dine in and delivery and not usually more one than the other. He said it's kind of hit or miss; sometimes more delivery than dine in.

Mr. Krueger asked about capacity for dine in customers. Mr. Mawhorter said 10-15 tables, maybe 30 people. He said they are sacrificing table space by moving.

Mr. Trippel said that Mr. Mawhorter said that there would be 10-15 tables; where would 30 people park? Mr. Mawhorter said he was hoping to get the variance to park on Locust Street. He said he took pictures to show how no one really parks on the side street and he drove by at all hours of the day.

Opposition

Douglas Elliott, 433 E. Mishawaka Avenue, said he lives across the street. He said there is only one handicap parking space and his mother uses it and now they are parking in the grass in the back, but sometimes they park on Locust across the street.

Mr. Elliott said their concern is they won't have anyplace to park during the day. It's a busy avenue and during the winter they don't plow curb to curb. Mr. Elliott said they have had five vehicles damaged this winter and small children play in the area. He said they have parking problems now and if they open Locust up to deliveries trucks would come in and cause heavy traffic.

Rebuttal

Mr. Mawhorter said plowing will be taken care of by him. He said he would speak with the delivery drivers to make sure they don't block any handicap spaces. He also said he can't recall a time where the delivery truck stayed more than 15 minutes.

Mr. Mawhorter said the handicap parking space will be there for them to use and no employees will park there.

Mr. McCampbell closed the Public Hearing on Appeal #18-15.

Mr. Trippel asked Mr. Prince about the intrusion into the neighborhood. Mr. Prince said he doesn't disagree with it. He said the property has historically been zoned C-1 and how do you adapt and reuse that.

Mr. Prince said when you think of Scoobies, the restaurant fits and with take out has quick turn over. It's busy at lunch, but slows down during other times. That's where staff is coming from. Mr. Prince said if it were a vacant lot, he wouldn't encourage a restaurant, but this is an existing commercial business attached to a house and how do you adapt it?

Mr. Prince said regarding parking, if you put in a curb cut on Locust, you would take away those spaces. If they put parking in behind the building, it would only fit a few spaces.

Mr. Prince said handicap parking, if located within the public right-of-way, anyone with a handicap tag can park there. He said there's no denying that section of Mishawaka Avenue is tight.

Mrs. Wells asked about snowplowing. Mr. Prince said our guys do the best they can.

Mr. Stillson asked if the variance stays with the building or the property. Mr. Prince said they would have to use it in the same way and another restaurant could come in.

Mr. Krueger said his concern is getting in a situation such as the restaurant on Lincolnway West and Logo and the neighbors didn't have any parking and they would complain.

Mr. Prince asked if he was referring to Francesco's? Mr. Krueger said yes and he would hate to see that situation on Mishawaka Avenue where people couldn't park near their homes. Mr. Prince said office and multi-family contributed to the problem at Francesco's.

Mr. Stillson said he trusts staff in their recommendations, but struggles with a 30 seat restaurant which is a lot of parking. He said with the way Mishawaka Avenue curves and he sees it as being a dangerous situation with delivery trucks at that spot.

Staff Recommendation

The Planning Staff recommends approval of Appeal 18-15 to allow a use variance for a single family residence in C-1 General Commercial District at 426 E. Mishawaka. 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 adjacent properties are also being used as residential, even though they may be zoned otherwise;*
- 3. The need for the variance arises from some condition peculiar to the property in that the property was used as a single family home with a business attached for many years;*
- 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 because the building was built as a single family home;*
- 5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.*

The Planning Department recommends approval of Appeal 18-15 for a developmental variance to allow for a reduction in parking variance from 6 to 0 spaces at 426 E. Mishawaka. This recommendation is based on the following finding of fact:

- 1. Approval will not be injurious to the public health, safety, morals and general welfare of the community. The parking generated by the new restaurant, whose business is primarily take-out, will be for a short period of time during the restaurant's business hours.*
- 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 site will not change substantially.*

- strict application of the terms of this chapter will result in practical difficulties in the use of the property as it would not allow an existing vacant structure to be re-occupied.*

MOTION: Marcia Wells moved to approve the Developmental Variance for Appeal #18-15. Charles Krueger seconded; motion fails with a vote of 2-3 (Krueger, Trippel, Stillson).

MOTION: Marcia Wells moved to forward the Use Variance for Appeal #18-15 to the Common Council with a favorable recommendation. Mr. Krueger seconded; motion carried with a vote of 4-1 (Krueger).

APPEAL #18-16 An appeal submitted by St. Peter Lutheran Church requesting a Sign Variance for **437 East Dragoon Trail** to permit an oversized monument sign.

Jackie Homann, President of St. Peter Lutheran Church, said the church has been there since 1978 and has had the same sign. She said the primary sign is on the corner of Bremen Highway and Dragoon Trail and a second sign is near the entrance on Dragoon Trail.

Ms. Homann said their proposal is to remove the three signs and install a new one as shown in the request. She said there would be a protective base with an electronic message sign. Ms. Homann said the sign is slightly taller than what would be allowed in R-1 zoning district and also with larger area. She did say it was shorter than the new Family Express sign across the street.

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

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 overall signage is being reduced with an easier to maintain product;*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because the existing signage on the property already exceeds width and display area allowed per ordinance, but the signage is being consolidated with overall display areas being reduced.*

MOTION: Larry Stillson moved to approve Appeal #18-16. Charles Trippel seconded; motion carried with a vote of 5-0.

APPEAL #18-17 An appeal submitted by Cressy Land Investments, LLC requesting a Developmental Variance for vacant **property east of 4840 North**

Main Street for a reduction of number of required parking spaces for a proposed hospital.

Brian McMorrow, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Appellant. He said Great Lakes Capital is going to purchase the 4.6 acre parcel and Vibra Hospital will be the operator of the acute care hospital and they operate about 3 dozen facilities.

Mr. McMorrow said they desire not to overpark and purchase more land than is necessary and will provide 150 parking spaces. He said there will be full circulation around the building and have access to Edison Lakes Parkway and Main Street.

Mr. McCampbell closed the Public Hearing on Appeal #18-17.

Staff Recommendation

The Planning Staff recommends approval of Appeal 18-17 to allow a reduction in the required number of parking spaces from 227 spaces to 150 spaces for a proposed 56,568 sq. ft. long-term acute care hospital.

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. Per the appellant's experience in developing similar medical rehabilitation facilities, the proposed number of parking spaces will provide adequate off-street parking for the employees, guests, and visitors.*
- 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. Property south of Edison Lakes Parkway is zoned C-1 General Commercial permitting similar uses while requiring parking spaces be provided per the ordinance for each site when developed.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Requiring that parking spaces be provided for the proposed use at a ratio per the zoning ordinance would result in a significant number of unneeded spaces, and unnecessarily consume additional land that could be used for future development or remain as open space.*

MOTION: Charles Trippel moved to approve Appeal #18-17. Charles Krueger seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:27 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner