

NOVEMBER 13, 2018

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, November 13, 2018, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Don McCampbell, Marcia Wells, and Larry Stillson. Absent: Charles Trippel. 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 October 9, 2018, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #18-34 An appeal submitted by Chick-Fil-A, Inc., requesting a Developmental Variance for **5517 North Main Street** to allow a reduction in required number of parking spaces and size of an accessory structure for dual drive thru addition.

Gary Rouse, GBC Design, 565 White Pond Drive, Akron, OH, and Rex Powell, Chick-fil-A, presented the appeal and said theirs is a very popular restaurant with lots of drive-thru traffic. They would like to add a second drive-thru lane on the west side. Mr. Rouse said it would eliminate some parking spaces, but they would improve the northerly part of the parking lot by flipping it and it would allow 9 more cars in stacking queue. He said this improvement, although losing 9 spaces, but would gain 9 cars in the drive-thru stacking and make all parking spaces usable.

Mr. Rouse said the second variance request is they would like to place a canopy over the order station. It would be 1,200 sqft and cover 6 cars and would protect customers from the elements when placing orders.

Mr. McCampbell closed the Public Hearing on Appeal #18-34.

Staff Recommendation

Planning Staff recommends approval of Appeal 18-35 to allow a reduction in the required number of parking spaces and an oversized accessory structure (free-standing canopy) for an existing Chick-Fil-A 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. The requested variances will allow the site to operate in a more efficient manner providing better service for the customers and increasing safety due to reduced drive-thru congestion.*
- 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 requested variances will not impact the adjacent area that includes similar restaurant, retail, and commercial uses.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. The current single lane drive-thru operations have become inefficient due to increased*

business. If the parking variance is not granted, the preferred dual lane drive-thru and parking lot reconfiguration would not be permitted thus not improving the on-site traffic conditions. If the accessory structure variance is not granted, the canopy over the face-to-face ordering stations will not be of an adequate size to serve the customers while protecting the employees.

MOTION: Larry Stillson moved to approve Appeal #18-34. Marcia Wells seconded; motion carried with a vote of 4-0.

APPEAL #18-35 An appeal submitted by Meijer Stores, LP, requesting a Developmental Variance for vacant property at the southeast corner of Bremen Highway and Meijer Drive, to allow for a reduction in landscaping for development of a credit union.

Brian McMorrow, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of Meijer and United Federal Credit Union. He said last month Plan Commission approved their plat and site plan.

Mr. McMorrow said the property has no access to Bremen Highway and Meijer Drive is considered a side yard. He said staff has indicated a variance would be required to not plant trees along Meijer Drive. Mr. McMorrow said the reason being a number of underground utilities that simply cannot be moved at this time.

Mr. McCampbell closed the Public Hearing on Appeal #18-35.

Mr. Prince said Meijer Drive is a public street and also said the City asked for additional easement in case utilities required more.

Staff Recommendation

The Planning Staff recommends approval of Appeal 18-35 to allow no trees within the exterior side yard for a proposed credit union.

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 requested variance pertains only to the landscaping standards and is not related to the proposed permitted use of the property.*
- 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. Approval of the variance will have no impact on the adjacent uses and will not negatively impact property values. Alternative landscaping will be provided in lieu of the required trees.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Adherence to the landscaping regulations would require the relocation of several existing underground utilities located within the property.*

MOTION: Marcia Wells moved to approve Appeal #18-35. Larry Stillson seconded; motion carried with a vote of 4-0.

APPEAL #18-36 An appeal submitted by IRC Princess City Plaza, L.L.C. requesting a Use Variance for **4520 Grape Road (Dick's Sporting Goods)** to allow up to three temporary storage structures.

Tammy Ortman, Lewis & Kappes, One American Square, Indianapolis, IN, appeared on behalf of Dick's Sporting Goods. She said Dick's has three (3) storage trailers behind the structure between the travel way and the building and have been used for an extended period of time. Ms. Ortman said the trailers are used to store larger items such as kayaks and they are not readily accessible from inside of the store and are critical to Dick's ability to satisfy customers. She also said they don't interfere with vehicle traffic.

Ms. Ortman said the three trailers are not inconsistent with the commercial use, but with the zoning ordinance. She said if there is an opportunity to reduce the number they will, but in this season they are limited to storage inside.

Ms. Ortman said they have agreed to put up a solid vinyl fence to shield line of sight from Main Street.

Mr. McCampbell closed the Public Hearing on Appeal #18-36.

Staff Recommendation

The Staff recommends in favor of Appeal 18-36, a Use Variance to allow outside storage in three existing containers for property located at 4520 Grape Road, subject to installing a 6' vinyl fence in a color to match the building on the east side of the containers.

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 little to no additional impact on the adjacent commercial or residential uses.*
- 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 a fence is being added to help screen the view of the containers.*
- 3. The need for a variance arises from the large scale size of the merchandise sold at this location, and the lack of storage space indoors.*
- 4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.*
- 5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this intersection as General and Service Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.*

MOTION: Charles Krueger moved to forward Appeal #18-36 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-0.

APPEAL #18-37 An appeal submitted by InSite Real Estate, LLC, requesting a Developmental Variance for **111 East University Drive, Granger**, to allow for a reduction of required number of parking spaces for a proposed restaurant use.

Alex Milanoski, InSite Real Estate, 1400 16th Street, Oak Brook, IL, presented the appeal. He said several years ago, a variance was approved for a reduction in parking spaces from 72 to 65 for a proposed restaurant use. He said the requirement is now 75 (for a proposed restaurant use) and would like approval of the existing to remain.

Mr. Milanowski said the existing tenants have low parking requirements, mattress store, eyeglass store, FEDEX.

Mr. McCampbell closed the Public Hearing on Appeal #18-37.

Staff Recommendation

The Planning Staff recommends approval of Appeal 18-37 to allow a reduction in number of required parking spaces from 75 spaces to 65 spaces for the existing commercial uses and proposed 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 adequate parking will be maintained on the property for both the current and proposed tenants;*
- 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 parking area and number of spaces provided is sufficient to support the existing and proposed uses. The parking lot is underutilized as the current tenants are low intensity uses that do not use all the spaces provided.*
- 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 lease the remaining tenant space for restaurant use. The additional traffic generated from the proposed use will not adversely affect the property.*

MOTION: Larry Stillson moved to approve Appeal #18-37. Marcia Wells seconded; motion carried with a vote of 4-0.

APPEAL #18-38 An appeal submitted by Robert L. Miller requesting a Developmental Variance for vacant land north of **55260 Fir Road** to allow outside storage and gravel parking area for proposed fence contractor.

Mike Huber, Abonmarche Consultants, 750 Lincolnway East, South Bend, said the property is currently zoned I-1 and a fence contracting business is looking to purchase the property. He said outside storage is prohibited in I-1 and they are requesting the Use Variance for that use and a Developmental Variance for gravel parking. Mr. Huber said the property is adjacent to Home Street corridor which also has industrial uses and the proposed use is compliant with the zoning ordinance.

Mr. Huber said storage of materials will be in the back and visibility from Fir Road would be limited. He said the primary reason for outside storage is scope and size and doesn't lend themselves to keeping inside a building and paving the storage area would be cost prohibitive. Mr. Huber said the client is expanding and moving from their county location and think the impact will be minimal given the uses nearby. Customer and employee parking will be paved.

Mr. Krueger asked if they were aware of the four conditions of approval. Mr. Huber said yes and they agree with them.

Opposition

David Santuro, 55276 Fir Road, said he lives south and adjacent to the property. He said he was contacted about 10 years ago by the owner and was asked to sell 2 acres. When he inquired of the owner why he was interested, Mr. Miller said he wanted 10 acres to zone commercial. Mr. Santuro told Mr. Miller he wasn't interested.

Mr. Santuro said another reason he's against this is the drainage in the area. He said he owns nearly 5 acres and the neighbor to the north owns 2 acres, Miller owns 2 acres on the back side. Mr. Santuro said this property is all mature woods and he hunts the property.

Mr. Santuro said he doesn't know if staff has seen the current location on McKinley of the proposed business. He said they have two huge dumpsters, brown down fencing; it's a mess and he can't believe the City allows this and he's in opposition to this. He said it's a quality of life issue and property value degradation. He thinks Planning Boards should concentrate more on businesses in this part of town and not open new businesses.

Mr. Santuro said a property nearby was sold recently and the new owners have put 22 cars on it. He said he has contacted code enforcement about it.

Jules Bickel, owner of 3401 and 3419 N. Home Street that back up to this property. He said he hadn't planned on coming to speak against this and then he heard the name of the business moving in mentioned. He said their place on McKinley is a mess and he doesn't believe we want to put that mess behind the beautiful Home Street properties. Mr. Bickel said he drives by their location on McKinley all the time and it's always cluttered up and he speaks very highly against them moving in. Mr. Bickel said if they are allowed to move in, it would be a detrimental to the properties on Home Street.

Rebuttal

Mr. Huber said he understands the conditions and they will screen to the south to minimize the impact. He said it gives his client the ability the organize the materials needed to operate their business.

Mr. McCampbell closed the Public Hearing on Appeal #18-38.

Mr. Prince said we received a Letter of Remonstrance from Mr. Santuro. He said he referred to another business where the building is falling down and said the properties spoken of in the letter are actually located in the county. Mr. Miller bought the property in 1966 and it was annexed in 1966.

Mr. Prince said the property in question is adjacent to a rail spur and zoned industrial so the business can use it. He said regarding the code enforcement statement, it's all located within St. Joseph County and said we have a higher code enforcement standards and would hope we would never let that happen. Also, the current business is located in the county and not the City.

Mr. Krueger said one gentleman raised the question about drainage and does this affect it. Mr. Prince said drainage is a concern and part of the process is just the Use Variance. They would have to submit a site plan and address how they would deal with drainage. The whole area has issues with a high water table.

Mr. Krueger asked if this would make drainage problems worse. Mr. Prince said they would have to keep 100-year storm water on their property. He said every property developed in the City has to take care of their own water.

Staff Recommendation

The Planning staff recommends approval of Appeal 18-38 to allow a Use Variance for outdoor storage and the Developmental Variance for a gravel storage area subject to the following conditions:

- 1. An administrative site plan shall be submitted.*
- 2. Gravel area shall be limited to a screened outside storage area identified on the site plan.*
- 3. No vehicles shall be parked/stored on an unpaved surface; and*
- 4. No known hazardous materials shall be stored on site.*

The Planning staff recommends denial of the Developmental Variance for a gravel parking area and/or driveway.

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 storage area will be over 300' from Fir Road, behind the proposed building;*
- 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 use is consistent with the existing industrial properties within the area;*
- 3. The need for the variance arises from some condition peculiar to the property in that the items to be stored would require a much larger building be constructed..*
- 4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the*

property would allow the more intense uses of that district which may not be appropriate for this area.

- 5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.*

MOTION: Larry Stillson moved to forward Appeal #18-38 Use Variance to the Common Council with a favorable recommendation. Charles Krueger seconded; motion fails with a vote of 1-3. The item goes to the Common Council with an unfavorable recommendation.

MOTION: Charles Krueger moved to deny Appeal #18-38 Developmental Variance. Marcia Wells seconded; motion carried with a vote of 3-1.

APPEAL #18-39 An appeal submitted by Blair Hills Community Association requesting a Developmental Variance for **907 Deepwood Drive** to allow a building addition to the community building with a 20' front yard setback.

Scott Coffel, 2212 Ridge Place, Mishawaka, President of Blair Hills Home Owner's Association, said they are looking to renovate their rec center and add their community office to the building. The building will be "squared up" and the office will be located in the new addition.

Mr. Coffel said the building was built 30 years ago and they want it to last the neighborhood well into the future. He said when they move the office into the building, they are looking to make it the center of their neighborhood both as administration and a rec center.

Mr. McCampbell closed the Public Hearing on Appeal #18-39.

Staff Recommendation

Staff recommends approval of Appeal #18-39 to allow the construction of a building addition with a 20' 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 and will be an enhancement to the facility, and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the covered entrance to the building is the portion that encroaches and without the variance, residents would not have dry and ice-free entry into the facility during inclement weather.*

MOTION: Marcia Wells moved to approve Appeal #18-39. Larry Stillson seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:35 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner