

DECEMBER 11, 2018

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, December 11, 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 the public, the following were also in attendance: Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

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Mr. McCampbell explained the Rules of Procedure.

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The Minutes of the November 13, 2018, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #18-40** An appeal submitted by Michael G. Beres requesting a Developmental Variance for **1004 East Fifth Street** to allow the construction of a 5' overhang with an 8' front building setback.

Michael Beres, 1004 E. 5<sup>th</sup> Street, said he wants to put an overhang on the building so when he gets out of his vehicle, he doesn't have to stand in the rain and snow before going into the building.

Mr. McCampbell closed the Public Hearing on Appeal #18-40.

**Staff Recommendation**

*The Planning Staff recommends approval of Appeal 18-40 to allow a reduction of the front building setback from 25' to 8'. 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 existing building does not currently meet the setback;*
- 3. 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 any improvement would require a front setback variance.*

**MOTION:** Larry Stillson moved to approve Appeal #18-40. Charles Trippel seconded; motion carried with a vote of 5-0.

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**APPEAL #18-41** An appeal submitted by David and Chasity Enyeart requesting a Developmental Variance for **553 West Eighth Street** to allow a 0' exterior side yard setback for a 4' 6" aluminum picket fence.

David and Chasity Enyeart, 553 W. 8<sup>th</sup> Street, said they would like to install a new fence which is 6" higher than the ordinance allows. They said the fence will be approximately 83% open.

Mr. McCampbell asked if this is similar to the existing fence. Mr. Enyeart said yes, similar.

Mr. Trippel asked why they were asking for an additional 6". Mr. Enyeart said when they purchased the fencing, they were not aware of the height restriction and by the time they found out, they had purchased it.

Mr. Stillson asked if it was the same height as the existing fence. Mr. Enyeart said no, he thinks that is 4'.

### **In Favor**

Nora Vandeputte, 547 W. 8<sup>th</sup> Street, said a nearby corner is the bus stop for John Young students and they frequently cut through their yard to get to the bus stop. She said these kids aren't small and she doesn't think 4'6" is going to be much of a deterrent.

Ms. Vandeputte said her family has had a presence on Eighth Street for over 100 years and the West End is no longer distinctive for ethnic diversity. She said the Enyeart's shovel their snow and mow their yard and are stewards of the community and are the type of homeowners they would like to court.

Mr. McCampbell closed the Public Hearing on Appeal #18-41.

### **Staff Recommendation**

*The Staff recommends **approval** of Appeal #18-41 to install a 4' 6" aluminum picket fence in the exterior side yard with a 0' 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 fence is only 6" higher than what code allows; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the increased height is minimal and installing the fence with a 12' 6" setback would result in substantial loss in use of their back yard.*

**MOTION:** Larry Stillson moved to approve Appeal #18-41. Charles Krueger seconded; motion carried with a vote of 5-0.

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**APPEAL #18-42** An appeal submitted by Donald Mawhorter requesting a various Developmental Variances for **426 East Mishawaka Avenue** to allow

a 0' front building setback for an overhang, and a 5' parking setback along Locust Street for new parking lot.

Donald Mawhorter, 426 E. Mishawaka Avenue, said he's trying to put in a parking lot and his measurements show a 5' setback and the ordinance requires 10' and he is hoping he can get approval to get the number of parking spaces required.

Mr. Mawhorter said he would like to extend the front overhang over the windows and doors maybe 12-18" off the front of the building. He said the required setback is 25' and there is only 2' from the building to the sidewalk. Mr. Mawhorter said it is mostly for curb appeal and help with weather.

Mr. McCampbell closed the Public Hearing on Appeal #18-42.

Mr. Krueger asked if this was a business or residence. Mr. Trippel said it's where Scoobies will be located.

Mr. Prince said a previous request for reduced parking was denied. This variance is to make the parking spaces worked within the space. He also said the front setback is for façade improvements.

**Staff Recommendation**

*The Planning Staff recommends approval of Appeal 18-42 to allow a reduction of the front building setback from 25' to 1' along Mishawaka Avenue and a parking setback from 10' to 5' along Locust Street 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 existing building does not currently meet the setback;*
- 3. 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 there is only so much open space on the lot given the existing improvements (house, garage, business, etc.).*

**MOTION:** Marcia Wells moved to approve Appeal #18-42. Larry Stillson seconded; motion carried with a vote of 5-0.

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**APPEAL #18-43** An appeal submitted by EVP Grape Road, LLC, requesting various Developmental Variances for **4110, 4120, 4150, 4170, and 4180 Grape Road** for lot size, building and parking setbacks, landscaping, and parking spaces.

Chris McCrea, 902 S 325 E, Warsaw, IN, said they are seeking variances for several items such as lot size, building and parking setbacks, landscaping, etc., as they are going to split this building off for sale.

Mr. McCampbell closed the Public Hearing on Appeal #18-43.

Mr. Trippel asked exactly what they are trying to do. Mr. Prince said they are subdividing the property which brings out a number of variances due to the sale of the property.

**Staff Recommendation**

*The Staff recommends approval of Appeal #18-43 as submitted for the Grape and Day Center located at the southeast corner of Grape and Day Roads. The 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 nothing is physically changing on 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 because the shopping center will function in the same way, but will have separate ownership of the buildings and associated parking lots.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Zoning Ordinance requires that individual properties and developments be separated by pavement setbacks and landscape buffers. The Ordinance does not allow the flexibility for separate properties to function as an integral unit.*

**MOTION:** Charles Trippel moved to approve Appeal #18-43. Larry Stillson seconded; motion carried with a vote of 5-0.

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**APPEAL #18-44** An appeal submitted by SCM 10X Mishawaka I, LLC requesting a Use Variance for vacant property between 5102 and 5310 North Main Street to allow multiple buildings with multiple tenants and one drive-thru restaurant on C-1 General Commercial zoned property.

Mike Huber, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the property owners. He said they are proposing to develop a mixed-use commercial development in 3 buildings for office, restaurant and retail.

Mr. Huber said normally they would like a planned unit development would be the best solution, but unfortunately the property is too small to qualify, and staff recommended this approach. Mr. Huber said other zonings don't qualify and C-1 zoning doesn't allow drive-thru.

Mr. Huber said while they would have preferred a PUD, they feel like these uses are complimentary to what's going on in the corridor.

Mr. Huber showed some renderings of how they anticipate the project will look and it will attract some nice tenants to the corridor. He said it's higher end than some of the other stuff that's around and fits with the character of the corridor.

Mr. Huber said they have met with staff throughout the process and are also working on the southwest corner as well. They want to make sure they have nice access and flow that will allow connectivity to the development behind, and also have a master plan approach to this and will continue to work with planning and engineering.

Mr. McCampbell asked if there will be access to the site on the north side of Portillo's. Mr. Stillson also asked if all of the tenants in that area will have access or will they have to go in and out from the present building to the new buildings. Mr. Huber said they want to make sure all are connected. Their entrance will be the primary entrance to Qdoba and he has had conversations with planning and engineering as to how everyone can get in and out easily.

Mr. Krueger asked if they were aware of the four conditions of approval. Mr. Huber said yes, and they have no issues with them.

Mr. McCampbell closed the Public Hearing on Appeal #18-44.

### **Staff Recommendation**

*The Planning Staff recommends approval of Appeal 18-44 to allow a use variance for multiple buildings with multiple tenants and one (1) restaurant with a drive thru facility on Lot 3 of Portillo's Main Street Minor Subdivision subject to the following conditions:*

- 1. The required minimum number of parking spaces for the entire property shall comply with the parking ratios for each individual use/tenant.*
- 2. Uses shall be limited to one (1) restaurant with drive-thru and those identified in the C-1 General Commercial Zoning District.*
- 3. Current stormwater management standards and grease-traps shall be implemented per City of Mishawaka Engineering Department.*
- 4. Access drive improvements shall be reviewed as a part of the site plan submittal and implemented as determined by the City of Mishawaka Engineering Department.*

*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 density and uses are consistent and compatible with the density and uses of the adjacent parcels. Furthermore, 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. The proposed multi-building development allows for greater flexibility in attracting tenants and users to the site, and is more consistent with the existing development within the corridor than traditional single building, multi-tenant strip development. The multi-building approach also allows a single developer to create a higher quality development. Drive-thru uses are currently present along the Main Street corridor including immediately to the south. Lastly, the proposed development will create additional traffic to support the existing adjacent commercial uses.*
- 4. The need for the variance arises from some condition peculiar to the property. The property is zoned C-1 General Commercial and the City of Mishawaka Zoning Ordinance does not have a zoning classification that would allow for the proposed multi-building development to include multiple tenants and one (1) drive-thru restaurant use.*

5. *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 does not allow the proposed multi-building development to include multiple tenants and one (1) drive-thru restaurant use. The preferred means by which to allow the proposed uses is through the use variance process.*
  
6. *The approval will not substantially interfere with the Mishawaka 2000 Comprehensive Plan. The Plan, created in 1990, guided medium density resident development within this property as an extension of an existing apartment complex to the north on Douglas Road. However, due to changing market conditions and land development patterns along the N. Main Street corridor, medium density residential is not an ideal use for the property. The proposed office, retail, and restaurant uses, being a higher intensity use more compatible with the adjacent land uses, does not conflict with the goals and objectives of the Comprehensive Plan.*

**MOTION:** Larry Stillson moved to approve Appeal #18-44. Charles Trippel seconded; motion carried with a vote of 5-0.

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**ADJOURNMENT:** 6:25 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner