

MARCH 12, 2019

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, March 12, 2019, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Chris Tordi, Charles Trippel, and Marcia Wells. Absent: Larry Stillson. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

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Mr. Trippel explained the Rules of Procedure.

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The Minutes of the February 12, 2019, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #19-02** An appeal submitted by Vision Properties, LLP, requesting a Developmental Variance for **312 South Main Street** to a reduction in rear and side yard pavement setbacks. *Continued from the February 12, 2019, meeting.*

Greg Shearon, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellants. He said the owner wants to demolish the Satellite Store and another building and construct a parking lot. Mr. Shearon said they own property at 328 S. Main Street which is Vision Clinic and they want the property for additional parking.

Mr. Shearon said the variance request is from the 5' setback from north and south to 3' 6" and 1' variance along the east property line for pavement setback. He said they have submitted for site plan approval and its approval is pending the outcome of this variance request.

Mr. Trippel closed the Public Hearing on Appeal #19-02.

**Staff Recommendation:**

*The Planning Department recommends **approval** of Appeal 19-02 from the required minimum 5' side and rear yard pavement setback to a 3.6' side yard setback and a 1' rear yard setback for a proposed new parking lot. 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 site improvements will enhance the existing conditions and will adhere to all local and applicable codes.*
- 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 pavement setbacks*

*will allow an adequate area for the required side and rear yard landscaping. No landscaping is currently present on the property.*

- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Due to the width of the property, requiring 5' side yard pavement setbacks would not allow for the most efficient use of the property as a parking lot. A 5' rear yard pavement setback would not allow adequate space to access all proposed parking spaces.*

**MOTION:** Charles Krueger moved to approve Appeal #19-02. Marcia Wells seconded; motion carried with a vote of 4-0.

**APPEAL #19-04** An appeal submitted by F&C Mishawaka Development, LLC, requesting a Use Variance for **216 North Spring Street** to allow for a temporary sales trailer through December 31, 2019.

Kathy Desautels. Flaherty & Collins, One Indiana Square, Indianapolis, said they are requesting the sales trailer for pre-leasing at the Mill at Ironworks Plaza. She said it wouldn't be there passed December 31 and would like to have first units occupied by August.

Mr. Trippel closed the Public Hearing on Appeal #19-04.

**Staff Recommendation:**

*Staff recommends **approval** of Appeal #19-04 to permit a 48' x 12' temporary sales office to be located at the southeast corner of Front and Spring Streets through December 31, 2019 subject to the following conditions:*

- 1. A site plan with exact placement and dimensioned setbacks must be submitted before a permit can be issued.*
- 2. Details on the mounting or placing of the trailers must be submitted before a permit can be issued.*
- 3. After the trailer is removed, restore any disturbed area.*

*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 structure will be professionally installed, maintained, and removed upon the end of use or by the end of the year.*
- 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 they plan to occupy is vacant, and located close to the project without being inside the construction limits.*
- 3. The need for the variance arises from some condition peculiar to the property in that the Zoning Ordinance does not allow for additional temporary offices on a property besides the construction trailer and it wouldn't be safe/practical to incorporate the construction office and sales office into the same building.*
- 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 Zoning*

*Ordinance does not allow for the use of an additional temporary structure on the property during construction of the main building and The Mill @ Ironworks development would not be allowed to conduct on-site advanced sales without it.*

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

**MOTION:** Chris Tordi moved to forward Appeal #19-04 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-0.

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**APPEAL #19-05** An appeal submitted by Lodder Dieter W & Monika M Living Trust on behalf of ABI Attachments, Inc., requesting a Use Variance for **520 South Byrkit Avenue** to allow trailer sales in I-2 Heavy Industrial Zoning District.

John Dilling, VP of Finance, ABI Attachments, 520 S. Byrkit Avenue, presented the request. He said they are seeking to obtain a dealer license from the state. He said there would be no trailers on site and would re-sell through a manufacturer in Texas. Mr. Dilling said in order to be able to sell them, they need a license, but need the Use Variance to be able to do so.

Mr. Tordi asked for clarification of the request. Mr. Dilling said they need a license from the state to sell the trailers in their names and part of the process is this variance request.

Mr. Tordi asked if they were aware of the conditions of approval. Mr. Dilling said yes.

Mr. Krueger asked if the trailers were RV's. Mr. Dilling said they are large water trailers for farmers or for equestrian use. They are large water tanks attached to a frame.

Mr. Trippel closed the Public Hearing on Appeal #19-05.

### **Staff Recommendation**

*The Planning Staff recommends approval of Appeal #19-05 to allow trailer sales in an I-2 Heavy Industrial District, subject to the following conditions:*

1. *No on-site signage advertising trailer/vehicles sales.*

*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 there will be no changes to the existing structure as the on-site activities are limited to phone calls and paperwork.*
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 zoned for industrial uses and the sales are not happening on-site.*
3. *The need for the variance arises from some condition peculiar to the property in that it is located in an industrial area and does not allow for the proposed trailer sales. The trailer sales will not happen on-site, but a State of Indiana dealer license application lists this address.*

4. *Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property because there is no district that allows both uses. It would not be practical to rezone the property for the trailer sales, because the C-4 Automobile Oriented Commercial District doesn't allow for the manufacturing that is ABI Attachments, Inc's main business. The only means by which to allow the proposed automobile use and maintain the current industrial portion is through the Use Variance process.*
5. *The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.*

**MOTION:** Marcia Wells moved to forward Appeal #19-05 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 4-0.

**APPEAL #19-06** An appeal submitted by Ahmed Jojo requesting a Use Variance for vacant lot south of **519 Ell Street** to permit an accessory structure without a primary structure on the lot.

Ahmed Jojo, 517 N. Pine, said his house has no yard to speak of. When he bought the property (519 Ell Street) in 2000 he tore down the house. He said Ell Street is less than 20' wide and he uses that lot as his back yard.

Mr. Jojo said he would like to put a 12' X 32' shed on the lot to hold his personal belongings. There will be no electricity to the building, no utilities and not used for anything other than storage.

Mr. Trippel asked if the shed was already there. Mr. Jojo said yes.

Mr. Tordi asked if he was aware of the conditions of approval. Mr. Jojo said yes.

Mr. Trippel closed the Public Hearing on Appeal #19-06.

**Staff Recommendation**

*The Planning Staff recommends approval of Appeal #19-05 to allow trailer sales in an I-2 Heavy Industrial District, subject to the following conditions:*

1. *If the properties are not sold at the same time, or to the same owner, the second storage shed on 517 Ell St. will be removed.*

*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 structure was professionally built and meets all setback requirements.*
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 this is the last lot on a dead end street. Neighboring property owners are the City of Mishawaka, the Appellant, and the neighbor to the north.*

3. *The need for the variance arises from some condition peculiar to the property because the Appellant owns two properties, and uses them as one, but they are separated by a street.*
4. *Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property because the lot which the house sits on has very little open space. An accessory structure could not be placed at 517 N. Pine Street without variances.*
5. *The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.*

**MOTION:** Charles Krueger moved to forward Appeal #19-06 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-0.

**APPEAL #19-07** An appeal submitted by Taddeo Holdings, LLC, requesting a Developmental Variance for **2537 Grape Road** to allow a reduction in landscaping along the south property line.

Terry Lang, Lang Feeney & Associates, 715 S. Michigan Street, South Bend, appeared on behalf of Taddeo Holdings. He said Mr. Taddeo purchased the old church several years ago and moved his real estate office from South Bend and is looking to improve the parking lot. He said along the south side there is limited space and they are asking for a variance from the required landscaping to allow space to have vehicular traffic in and out without problems.

Mr. Trippel closed the Public Hearing on Appeal #19-07.

**Staff Recommendation**

*The Planning Staff recommends approval of Appeal 19-07 to allow a reduction in the required pavement setback, as amended to 2', and no landscaping along the south property line for an existing office building located at 2537 Grape Road. 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 property currently includes an occupied office building, an existing gravel access drive along the south property line, and a small unimproved parking area. The proposed paved access drive and parking areas, storm water retention basin, and landscaping will enhance existing conditions.*
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 pavement setback, as amended, should provide adequate space to install the proposed improvements without encroaching on or impacting the adjacent property. The proposed site improvements and landscaping will improve the existing conditions*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property. A limited distance exists between the building and property line to accommodate the proposed improvements. Adherence to the required pavement setbacks and landscaping would not allow the appellant the ability to construct a two-way access drive and maximize off-street parking to meet the demand of the current tenants.*

**MOTION:** Marcia Wells moved to approve Appeal #19-07. Mr. Tordi seconded; motion carried with a vote of 4-0.

**APPEAL #19-08** An appeal submitted by Gates Automotive Group on behalf of University Park Mall LLC requesting a Use Variance for **6501 Grape Road** to permit three (3) separate off-site Used Car Sales as follows: ten (10) days in May, ten (10) days in June, and ten (10) days in August for three (3) consecutive years, with temporary signage including banners and cold air balloons, and two (2) mobile office facilities for business transactions and securing of valuables.

Clint Emberton, General Manager Gates Automotive Group, said they are seeking to use the farthest northern parking lot at the Mall (JC Penney), that they have used since 2010. He said they are grateful for the consideration of the previous requests from the Board and Council.

Mr. Emberton said this request is virtually identical to ones granted back to 2010 with the last being approved in 2016 for three years and there have been no issues reported and they are requesting another three year approval. He said Gates has followed all guidelines set by Planning staff.

Mr. Trippel closed the Public Hearing on Appeal #19-08.

**Staff Recommendation**

*Staff recommends in **favor** of Appeal #19-08, Use Variance, to allow for the temporary use of a portion of the University Park Mall parking lot for an off-site car sales event for three (3) ten day periods per year, for the next three years. The event proposes utilizing three (3) tents, two (2) mobile office facilities, and temporary signage. The Use Variance is subject to the following conditions:*

USES:

- *The event shall be limited to the display and sales of automobiles and light trucks for ten (10) days in May, June, and August of 2019, 2020, and 2021 as presented.*

SITE PLAN:

- *A site plan/layout shall be submitted identifying the location of display areas, visitor parking, tents portable toilets, temporary lighting, and other related temporary improvements subject to staff review and approval. Written approval of the site plan/layout shall be required from University Park Mall, LLC.*

ACCESS/TRAFFIC CONTROL REQUIREMENTS:

- *Access to the event use shall be through existing mall entrances. Additional restrictions may be requested by the City of Mishawaka the Director of Engineering as deemed appropriate as part of the review of a site plan/layout. The City of Mishawaka Police Department may also request any modifications to layout, parking, access, or attention devices during the event if it is deemed problematic to through traffic, or any safety issue is identified.*
- **All mall service drives shall remain open at all times.**

SETBACKS:

- *All tents, display/parking areas, portable toilets and large inflatable balloons shall be setback a minimum of 25 feet from any road right-of-way and 10 feet from any internal access drive.*

SIGNAGE/ATTENTION DEVICES:

- *A plan identifying the location and type of all signage/attention devices shall be submitted subject to staff review and approval. A maximum of two (2) temporary signs no larger than 4' X 8' shall be permitted on Grape Road. A maximum of two temporary signs shall be permitted along State Road 23. **No inflatable air balloons shall be permitted.** All signs and attention getting devices shall not flash or be animated where they are overtly distracting to the motoring public. Internal directional signs shall also be permitted as necessary provided they are not visible from surrounding major roadways.*

*This recommendation is based upon the following findings of fact:*

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the development is temporary and will maintain certain minimum developmental standards as outlined herein;*
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 area is surrounded by commercial development;*
3. *The need for the variance arises from some condition peculiar to the property involved in that the C-2 zoning does not permit vehicle sales, even on a very limited basis, thus requiring the Use Variance for the proposed use;*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance as drafted, would not permit the Appellant to hold their regional event at this site, specifically, the University Park Mall is one of the few regional facilities that has been inherently constructed to handle this type of event by having the appropriate access, lighting, and parking;*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial and the surrounding area is one of the largest consolidated retail areas in the State of Indiana.*

**MOTION:** Charles Krueger moved to forward Appeal #19-08 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-0.

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**APPEAL #19-09** An appeal submitted by JLJ Group LLC, on behalf of Charles S. Hayes Inc., dba Hayes Towers, requesting a Conditional Use at .30 acres of **500 Union Street** to permit a 185' communications (cell) tower.

Ann Hayes on behalf of Hayes Towers, 814 Marietta Street, South Bend, said they are seeking a Conditional Use Permit for a cell tower in I-2 zoning. She said we're all familiar with cell phones in our lives and nationwide, nearly 50% of homes are wireless only and 70% of 911 calls are made from cell phones.

Ms. Hayes said the tower will accommodate four carriers and will fill capacity gaps by T-Mobile. It will be 185' tall and will not need to be lit and will be monopole. She said they have worked with staff and also met with Mr. Emmons and has his support.

Mr. Krueger asked if the new tower had anything to do with the new upgrades of 5G. Ms. Hayes said it depends on what carriers want to put on their towers and with new equipment they may have that capability and may implement at some time.

Mr. Krueger asked if she was aware of the conditions of approval. Ms. Hayes said yes and they are prepared to meet them.

Mr. Trippel closed the Public Hearing on Appeal #19-09.

### **Staff Recommendation**

*The staff recommends in favor Appeal 19-09 to allow a telecommunications facility consisting of a 180' monopole tower (185' overall with appurtenances) and a fenced compound for associated buildings and equipment located at 500 S. Union Street subject to the following conditions:*

- 1) The monopole tower shall not exceed more than 185 ft. in height including all attached appurtenances and/or antenna.*
- 2) A 6' minimum to 8' maximum high security fence with vinyl slats shall be provided around the base of the tower to fully enclose all future buildings and equipment. Barbed wire may be utilized.*
- 3) An Administrative Site Plan shall be submitted for the property. The site plan shall be consistent with the preliminary site plan as submitted.*
- 4) A recorded ingress/egress easement, or equivalent documentation, showing legal access between the compound area and the Union Street public right-of-way shall be provided prior to site plan approval or issuance of an improvement location permit.*
- 5) The proposed access drive between the vacated portion of Union Street and the access gate into the compound shall be paved.*
- 6) A storm water drainage plan shall be submitted to include an adequate system and means to capture all runoff from the new impervious surface areas.*

*This recommendation is based upon the following findings of fact:*

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. The property on which the tower is to be located is adjacent to industrial, commercial, and office uses, with limited residential uses north of the railroad tracks. Screening/buffering is present between the area north of the railroad tracks and the proposed tower location. The tower and compound will be securely fenced and will be constructed and managed according to all regulatory codes.*

2. *The use and value of the area adjacent to the property included in the conditional use permit will not be affected in a substantially adverse manner. The adjacent area consists primarily of industrial, office, and commercial development, with adequate screening/buffering between the proposed tower location on the applicant's property and the limited residential properties to the north.*
  
3. *The conditions of approval shall mitigate any potentially adverse impact of the proposed use upon the adjacent properties.*
  
4. *Adequate measures will be taken to provide proper utilities, drainage, paved access roads, and fencing for safety precautions. Additional landscape buffering will not be required due to the adjacent uses being predominantly industrial, office, and commercial, with the limited residential uses to the north being adequately screened. The tower compound will be unmanned and will not cause traffic congestion.*
  
5. *The granting of this conditional use is in the best interests of the community. The use of cellular phones and technology are continually increasing creating a higher demand for better cellular coverage for public safety entities, businesses, municipalities and residents. The proposed tower at this location is necessary to fill gaps in coverage within the surrounding area. The tower will not place additional demands on public services and facilities in excess of current capacity. No sanitary sewer or water or other public services are required. No traffic will be generated. Adequate electric service is available.*

**MOTION:** Charles Krueger moved to forward Appeal #19-09 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-0.

**APPEAL #19-10** An appeal submitted by Bruce and Rebecca Close requesting a Developmental Variance for **2115 East Fourth Street** to permit a handicap accessible ramp with a 15' front yard setback.

Rebecca Close, 2115 E. Fourth Street, said they would like a ramp in the front. She said it's going to be 8' from the front of the house as they decided to remove bushes. Mrs. Close said her husband had a stroke and is currently at a rehab facility and she hopes he can come home soon and needs the ramp.

Mr. Trippel closed the Public Hearing on Appeal #19-10.

**Staff Recommendation**

Staff recommends **approval** of Appeal #19-10 to allow a handicap access ramp to be constructed with an 8' front yard 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;*
  
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 ramp is modest in size and will still be approximately 23' from the edge of the street pavement; and*

3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance has no provision to accommodate a situation such as the Appellant's where special access to an individual's home is needed.*

**MOTION:** Chris Tordi moved to approve Appeal #19-10. Marcia Wells seconded; motion carried with a vote of 4-0.

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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