

JUNE 11, 2019

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, June 11, 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, Marcia Wells, and Larry Stillson. In addition to members of the public, the following were also in attendance: David Bent, 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 May 14, 2019, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #19-15** An appeal submitted by Roth Property Solutions, LLC, requesting a Developmental Variance for vacant land at the northwest corner of South Elder Street and Norton Court to permit a landscape barrier of trees instead of a fence. *Continued from the May 14, 2019, meeting.*

Jason Roth, Roth Property Solutions, 30438 S. Meadowbrook Lane, Elkhart, presented the appeal. He said he wants to put in landscaping instead of a fence due to it being more aesthetically pleasing.

Mr. Trippel asked if it was going to be a contractor's office. Mr. Roth said yes, and office and warehouse.

Mr. Trippel closed the Public Hearing on Appeal #19-15.

**Staff Recommendation**

*The Planning Staff recommends approval of Appeal 19-15 for a proposed electrical contractor's office and warehouse to allow an existing tree row and two new overstory trees along a property line adjacent to residentially zoned property instead of the required opaque 7' high fence.*

*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. A screening fence is not necessary due the adjacent residentially zoned property to the west being undeveloped.*
- 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. The existing tree row will be maintained with additional landscaping being provided.*

3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Adherence to the screening fence requirement is unnecessary due the existing adjacent land uses.*

**MOTION:** Charles Krueger moved to approve Appeal #19-15. Larry Stillson seconded; motion carried with a vote of 5-0.

**APPEAL #19-16** An appeal submitted by Jimmy Gosa requesting a Developmental Variance for **112 East Eleventh Street** to permit a handicap accessible ramp with a 0' front yard setback. *Continued from the May 14, 2019, meeting.*

Marcia Belinski on behalf of Mr. Gosa. She said he needs a ramp to get in and out of the house as he can't go down stairs.

Mr. Trippel closed the Public Hearing on Appeal #19-16.

#### **Staff Recommendation**

*Staff recommends **approval** of Appeal #19-16 to allow a handicap access ramp with a 0' exterior side 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 end within 2' of the front sidewalk; 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:** Larry Stillson moved to approve Appeal #19-16. Chris Tordi seconded; motion carried with a vote of 5-0.

**APPEAL #19-22** An appeal submitted by Terry and Becky Archer requesting a Developmental Variance for **604 South Logan Street** to allow a 13' front building setback for a second story home addition.

Terry Archer, 604 S. Logan Street, said he is requesting a front setback. He said the porch isn't being added on to, just the front of the house.

Mr. Krueger asked if the addition was over the porch. Mr. Archer said no, they came in to get permits and were told to get a variance from the porch, but the actual setback is 5' more. He said it's currently a story and a half and want to make it a full two story.

Mr. Trippel closed the Public Hearing on Appeal #19-22.

Mr. Stillson asked if the footprint would change. Mr. Archer said it will go straight up. They will remove the back porch and add a one story addition on the back.

**Staff Recommendation**

*Staff recommends approval of Appeal #19-22 allow the construction of a home addition with a 13’ 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 encroachment will not be increased, is fairly consistent with other homes in the neighborhood, and represents an investment in the neighborhood; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the home already encroaches into the front setback and any addition would not be possible without requesting a variance.*

**MOTION:** Marcia Wells moved to approve Appeal #19-22. Larry Stillson seconded; motion carried with a vote of 5-0.

**APPEAL #19-23**

An appeal submitted by Simon Properties and Spaceman Ventures LLC, dba Sola Salon, requesting a Use Variance for **6501 Grape Road, Unit 1205A**, to allow microblading and/or permanent make-up services within a salon.

Joe Gravitt, 9102 N. Meridian Street, Indianapolis, said he has a 27 studio salon concept and they rent space to others. Mr. Gravitt said they want to open to microblading for semi-permanent eyebrows. He said this process is actually doing cosmetic work to their eyebrows.

Mr. Gravitt said they are looking for a variance as it's considered a tattoo due to being a new process and is not currently allowed.

Mr. Stillson asked if this is specifically for the kind of cosmetic work you do and nothing beyond it. Mr. Gravitt said it's a specialized service, very high end.

**Staff Recommendation**

*Staff recommends in **favor** of Appeal #19-23 a Use Variance, to allow microblading services in Suite 1205A (Sola Salon) of the University Park Mall. 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 existing business provides similar personal services/salon 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 it is included in a large 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 a tattoo establishment, but does*

*allow the salon where the process is taking place, 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, because the nature of the business is similar to that of a salon and should not generate more traffic than any of the existing businesses within the development.;*
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:** Chris Tordi moved to forward Appeal #19-23 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 5-0.

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**APPEAL #19-24** An appeal submitted by David N. and Eileen R. Shingledecker requesting a Developmental Variance for **701 Prism Valley Drive** to allow a home addition with a 19' exterior side yard setback (instead of platted 25' side yard setback).

David Shingledecker, 701 Prism Valley Drive, said he is taking down an aging shed and adding a new one that accents the house. He said it will be 19' from the sidewalk and closer to the front of the house and will be safer to access with better lighting.

Mr. Trippel closed the Public Hearing on Appeal #19-24.

#### **Staff Recommendation**

*The Staff recommends **approval** of Appeal #19-24 to permit an 8' X 10' shed with a 19' exterior side 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 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 deteriorating shed will be removed and the new one located 8' closer to the house; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because there is a 25' easement in the rear yard and also an elevation change which makes the exterior side yard the logical location for the shed. Also, the 19' setback not require a variance if located in most any other R-1 zoned neighborhood.*

**MOTION:** Charles Krueger moved to approve Appeal #19-24. Larry Stillson seconded; motion carried with a vote of 5-0.

**APPEAL #19-25** An appeal submitted by Alex and Gana Glazman, **121 West Lawrence Street**, to allow an 8' front building setback for an enclosed front porch.

Alex Glazman, 121 W. Lawrence Street, said he has a concrete slab in front of the house and would like to build a porch with a roof and walls, enclosed. He said the neighbors on both sides have similar porches.

Derek Spier read a letter of Concern/Support from the owner of 127 W. Lawrence, Steve Roeder, and asked that the enclosed porch go no farther than 2' in front of the existing concrete slab.

Mr. Trippel closed the Public Hearing on Appeal #19-25.

**Staff Recommendation**

*Staff recommends **approval** of Appeal #19-25 to allow a front porch addition 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 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 stoop is existing and other nearby houses are closer to the setback; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the home already sits closer than the setback allows, any addition would require a variance.*

**MOTION:** Larry Stillson moved to approve Appeal #19-25. Marcia Wells seconded; motion carried with a vote of 5-0.

**APPEAL #19-26** An appeal submitted by University Park Mall LLC c/o Simon Property Group requesting a Use Variance for **6501 Grape Road** to permit a four (4) day RV show to be located in the JC Penney parking lot from June 27 to June 30, 2019.

Lily Tikijian, Director of Marketing and Business Development for University Park Mall said they hosted an RV sales event last year and wish to move to the J. C. Penney parking lot and expand it.

Mr. Stillson said staff has listed a number of conditions. Ms. Tikijian said they agree with them.

Mr. Krueger asked if this request is similar to the car sales at the mall. Ms. Tikijian said yes.

Mr. Trippel closed the Public Hearing on Appeal #19-26.

**Staff Recommendation**

Staff recommends in **favor** of Appeal #19-26, Use Variance, to allow for the temporary use of a portion of the University Park Mall parking lot for a 4-day RV sales event. The Use Variance is subject to the following conditions:

USES:

- The event shall be limited to the display and sales of RVs during a 4 day period between June 27 and June 30, 2019.

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, and portable toilets 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:** Marcia Wells moved to forward Appeal #19-26 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 5-0.

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**ADJOURNMENT:** 6:15 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner