

AUGUST 13, 2019

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, August 13, 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, and Larry Stillson. Absent: Charles Trippel and Marcia Wells. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

Mr. Tordi explained the Rules of Procedure.

The Minutes of the July 9, 2019, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #19-28 An appeal submitted by Jay Frederickson requesting a Use Variance for **228 West Edison Road**, Suite 600, to permit microblading and/or permanent make up.

Lindsay Bowerman, 15495 Kerlin Drive, Granger, said they started doing permanent make-up about 3 years ago. This is helping people, more than a vanity thing, helping people with cancer and other diseases who don't have eyebrows.

Mr. Tordi closed the Public Hearing on Appeal #19-28.

Staff Recommendation

*The Staff recommends **approval** of Appeal 19-28 for a Use Variance to allow microblading/permanent make-up services within an existing multi-tenant commercial building at 228 W. Edison Road. This recommendation is based on 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 business will be located within an existing commercial plaza.*
- 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 business will be located in a building that is surrounded by various commercial uses.*
- 3. The need for the variance arises from some condition peculiar to the property involved in that the C-2 zoning does not permit microblading/permanent tattoo services, but does allow the salon where the process is taking place, thus requiring the Use Variance for the proposed use.*

4. *Since the business establishment is moving into an existing commercial center there are proper utilities, drainage, paved access roads, landscape, buffering, fencing, leakproof dikes, and safety precautions to minimize traffic congestion.*
5. *The granting of the Use Variance is in the best interest for the community because this location is in one of the areas where multiple commercial businesses already exist and the orientation of the building provides that the microblading/permanent make up services will not be visible from the street.*

MOTION: Larry Stillson moved to forward Appeal #19-28 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 3-0.

APPEAL #19-29 An appeal submitted by Ryan Kazmierzak requesting a Developmental Variance for **202 West Seventh Street** to allow a handicap accessible ramp with a 0' front yard setback.

Ryan Kazmierzak, 202 W. Seventh Street, Mishawaka, said the ramp is for his disabled daughter. He said she's 12 and up until now he's been carrying her in and out of the house and this is the only access point where doors are large enough for her power chair to get in and out.

Mr. Stillson asked if the ramp will allow her some independence. Mr. Kazmierzak said she's not mentally capable of taking care of herself. She can traverse with the chair on her own, but someone needs to be there.

Mr. Tordi closed the Public Hearing on Appeal #19-29.

Staff Recommendation

*Staff recommends **approval** of Appeal #19-29 to allow a handicap access ramp to be constructed with a 0' 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 house is already closer than the 25' setback and the ramp is medically necessary; 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: Charles Krueger moved to approve Appeal #19-29. Larry Stillson seconded; motion carried with a vote of 3-0.

APPEAL #19-30 An appeal submitted by Penn Harris Madison School Corporation requesting a Sign Variance for **4015 Filbert Road (Walt Disney Elementary School)**, to permit a 30 sqft monument sign.

Randy Whiteman, US Signcrafters, 216 Lincolnway East, Osceola, appeared on behalf of PHM. He said they are asking to change the monument sign to a new face and increase the height by 1' to get the sign out of the landscaping and snow. Also, they wish to install a wall sign with 18" letters over the east entrance of the building. Mr. Whiteman said the sign ordinance doesn't allow signs for churches and schools in a residential district.

Mr. Tordi closed the Public Hearing on Appeal #19-30.

Staff Recommendation

The Staff recommends approval of the variance to the existing freestanding sign to be replaced with a 30 sf display area and 5' overall height sign, and add new building signage (letters) with 22.5 sf display area at Walt Disney School. 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 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 improvements are meant to provide better visibility for the school;*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because there is no signage allowed for schools in the R-1 District. The existing sign is considered legal non-conforming.*

MOTION: Larry Stillson moved to approve Appeal #19-31. Charles Krueger seconded; motion carried with a vote of 3-0.

APPEAL #19-31 An appeal submitted by Barry and Sue Hower requesting a Developmental Variance for **2002 West Sixth Street** to allow a 6' privacy fence with a 0' exterior side yard setback.

Barry Hower, 2002 W. Sixth Street, said he wants to replace the chain link fence to a 6' privacy fence. He said he has 2 large dogs who have jumped the fence and wants to eliminate that.

Mr. Stillson asked if the fence would interfere with traffic line of site. Mr. Hower said the railroad tracks are at the rear of his property and on the other side is a large commercial building.

Mr. Tordi closed the Public Hearing on Appeal #19-31.

Staff Recommendation

*The Staff recommends **approval** of Appeal #19-31 to install a 6' privacy fence with a 0' exterior side yard setback, to be set back 1' from the sidewalk. 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 represents an improvement to their property; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because installing a privacy fence with a 12.5' exterior side yard setback would result in the loss of usable rear yard space.*

MOTION: Charles Krueger moved to approve Appeal #19-31. Larry Stillson seconded; motion carried with a vote of 3-0.

APPEAL #19-32 An appeal submitted by Michael E. Wood requesting a Developmental Variance for **602 East Mishawaka Avenue** to allow zero (0) off-street parking spaces for a performing arts studio theater.

Melissa Gard, 2522 Erskine Blvd., South Bend, appeared on behalf of the Appellant. She said the acting ensemble is a small all-volunteer acting community. It's been in South Bend and want to move to Mishawaka to deepen their cultural footprint and will be beneficial to the neighborhood.

Mr. Krueger asked what time are the performances. Ms. Gard said they rehearse mostly in the evenings and performances are Thursday, Friday, Saturday, and sometimes Sunday night. Staged readings are on Monday nights.

Mr. Krueger asked how many people attend. Ms. Gard said audiences are usually 20-25 people per performance. She said perhaps up to 50 at some point, but they prefer a small audience.

Mr. Krueger asked how late were the performances. Ms. Gard said sometimes up to 11:00 p.m., but noise doesn't go outside of the building. They typically start at 7:00 and run to 9:30 p.m.

Mr. Krueger asked if they thought it would be a hardship for the neighbors. Ms. Gard said they don't think so and they have been in the neighborhood in the evenings and seem to have enough parking. She said they have spoken to several churches about using their lots in the evenings.

Mr. Stillson encouraged Ms. Gard to have their actors and audiences to use the side streets and not the Avenue for parking as it becomes an issue for people getting in and out of cars. Ms. Gard said they are in agreement to that.

Mr. Tordi closed the Public Hearing on Appeal #19-32.

Staff Recommendation

The Planning Staff recommends approval of Appeal 19-32 to allow a reduction in number of required parking spaces from 20 spaces to 0 spaces for the existing 4,800 sq. ft. building to be used for a performing arts venue and studio. 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. Adequate parking should be maintained via the existing adjacent on-street parking with additional parking for larger events to be provided at nearby churches and businesses. The proposed use will also provide an additional cultural outlet and will increase activity in the area adding to the safety of the immediate neighborhood;*
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. Reoccupying an existing vacant commercial building for use as a performing art venue and studio will improve the current appearance of the property while improving safety due to increased activity.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Adhering to the required number of parking spaces due to a change in use would essentially prevent any new business or use of the property. No area exists on the property which could be improved for off-street parking.*

MOTION: Larry Stillson moved to approve Appeal #19-32. Charles Krueger seconded; motion carried with a vote of 3-0.

APPEAL #19-33 An appeal submitted by L & B Penn LLC & PJT Penn LLC requesting a Use Variance at **2320 Douglas Road** to allow wholesale landscape material sales.

Bernie Feeney, Lang Feeney & Associates, 715 S. Michigan Street, South Bend, appeared on behalf of the Appellants. He said as a result of the Douglas Road construction project there is a significant amount of topsoil and is stacked and stored on the west end of the long storage building of the original homestead.

Mr. Feeney said this request will allow the Penn's continuing wholesale dirt operations to the City and county for the net 3 years. He said they have read and understand the requirements and are in agreement.

Mr. Krueger asked if the topsoil will be replenished when sold or is this the end of it. Mr. Feeney said they aren't sure as there is plenty on the farm and is very thick. He said it's hardly the location they want to be in if they want to sell as a commercial enterprise. They will probably move to another location.

Mr. Tordi closed the Public Hearing on Appeal #19-33.

Staff Recommendation

The Planning Staff recommends approval of Appeal 19-33 to allow a use variance for wholesale landscape material sales on Lot 3 of Juday Creek Business Park subject to the following conditions:

1. *The sale of wholesale landscape materials shall be limited to only top soil for a period not to exceed three (3) years.*
2. *The access drive improvements along Veteran's Parkway shall reviewed 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 sale of wholesale landscaping materials will continue to operate in a similar manner as the current operations. A new access drive with proper erosion control measures will be located along Veteran's Parkway reducing both potential traffic conflicts and sedimentation being tracked onto the adjacent public rights-of-way.*
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 current use of the property will continue as is with only modifications to the current access.*
3. *The need for the variance arises from some condition peculiar to the property. A surplus of excavation materials have been deposited on the property as a result of the Douglas Road construction. Thus, a use variance is required to allow the continued sale and removal of the unneeded and unwanted materials.*
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. Current uses permitted on the property do not allow for wholesale landscape material sales.*
5. *The approval will not substantially interfere with the Mishawaka 2000 Comprehensive Plan. Although the property is not located within the boundary of the plan, the continued use of the site for wholesale landscape material sales will be temporary in nature. Future development of the property is anticipated.*

MOTION: Charles Krueger moved to forward Appeal #19-33 to the Common Council with a favorable recommendation. Larry Stillson seconded; motion carried with a vote of 3-0.

APPEAL #19-34 An appeal submitted by Dennis R. and Lucille A. Smethers requesting a Developmental Variance at **613 Bay View Drive** to allow a 7' solid fence with a 10' rear yard setback.

Dennis and Lucille Smethers, 613 Bay View Drive, said they are requesting the reduced setback as they are several trees in the back yard and would be put outside the fence line. They said another neighbor got a variances previously and want to put in line to make it look nice. Mr. and Mrs. Smethers said there are no line of site issues as they are not on a corner.

Mr. Tordi closed the Public Hearing on Appeal #19-34.

Staff Recommendation

Staff recommends **approval** of Appeal #19-34 to allow a fence with a 10' front yard setback on a through 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 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 will actually be*

approximately 18' from the edge of pavement, even with other similar fences in the area; and

- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the lot is a through lot with two front yard setbacks.*

MOTION: Larry Stillson moved to approve Appeal #19-34. Charles Krueger seconded; motion carried with a vote of 3-0.

APPEAL #19-35 An appeal submitted by Patricia A. Skelton requesting a Use Variance for **903 East Fifth Street** to allow an existing house and 1,500 sqft accessory structure to be used as a home-based business in I-1 Light Industrial zoning district.

Norman Vandermee, 903 E. Fifth Street, said he does contract design work for race car teams and some automotive work, but everything he builds is a prototype. He makes a design, then makes molds and those molds get produced off-site. Mr. Vandermee said he isn't a large production outfit by any stretch of the imagination. He said he did design work at his house for 3 large projects for Notre Dame.

Mr. Vandermee said he started in 1984 in a 1 ½ stall garage at his house and he's been building prototype molds inside the garage for quite a while and it's becoming pretty tight. He said the property is zoned industrial and he's never had any problems with the neighbors and no one has complained to him. He just wants a larger garage. It's not a large facility or warehouse and no traffic or trucks coming in and out. Mr. Vandermee said he's the sole employee and if you haven't noticed it in the last 30 years, you won't notice any difference.

Opposition

Mark and Tammy Carmean, 923 E. Fifth Street, said their concern is surrounding them everything is I-1 and they have been there 35 years. They are concerned about their property value. They said quite some time ago large industrial pole barns were put up without any notification and there are folks living in them. Mrs. Carmean said they came to City Hall and were told someone worked there and there was nothing they could do about it. They are also concerned about the safety in the neighborhood.

Mr. and Mrs. Carmean said they are concerned about their property values. Mrs. Carmean said she has nothing against her neighbor. She said there are people living in the industrial pole barns and they are against this because they don't want another pole barn in the neighborhood.

Mr. Krueger asked them to confirm that people were living in the industrial buildings. Mrs. Carmean said yes.

Mr. Krueger asked if there were windows in the pole barn. Mrs. Carmean said maybe one door and one window.

Mr. Krueger asked if they had brought this to the attention of Code Enforcement. Mrs. Carmean said yes, several times, but no one does anything.

Mr. Prince said Planning will look into this.

Mr. Prince also said Mrs. Carmean said the pole buildings went up without notice. He said when the applicant simply wanted to demo the house and build a building they could do so because the zoning was already in place and you don't have to give notice when tearing down a house and building an industrial building. No notice is required.

Mr. Prince said it gets convoluted, but the zoning remains industrial and as long as the house stays, it can remain residential as it's essentially a non-conforming use.

Rebuttal

Mr. Vandermee said he wants to reinvest in the neighborhood. He said houses across the street aren't the greatest near the railroad tracks, but they are making them nicer. That's what he's doing. He said he wants to stay there and live there.

Mr. Vandermee said the garage isn't looking the best, but honestly feels a newer garage would add value to the property. He said he wants to get rid of trees that aren't looking good and improve the corner lot as a whole and said it won't look like a pole building.

Mr. Stillson said the existing garage is 400 sqft and you want to increase to 1,500 sqft. Mr. Vandermee said yes, looking at a 4 car garage. He said he wants to tear down the garage and will put the garage all the way back and move over an additional 10'. It won't be as big as others in the neighborhood.

Mr. Krueger asked if there will be an overhead door. Mr. Vandermee said yes, he wants to park cars inside.

Mr. Krueger asked if it will look like a garage. Mr. Vandermee said yes, it won't be a warehouse. He will make it look like a garage. He's not changing anything other than the size and his wife wants to keep her car in the garage.

Mr. Tordi closed the Public Hearing on Appeal #19-35.

Staff Recommendation

The Planning Staff recommends approval of Appeal 19-35 to allow an existing non-conforming single family residence to remain and add a machine shop (home occupation) within a new 1,500 sq. ft. accessory structure subject to the following conditions:

3. *All business operations shall occur completely within the accessory structure.*
4. *No outside storage of raw materials or finished product is permitted.*
5. *No person shall be employed on the premises other than a member of the immediate family residing on the premises.*
6. *No signage shall be permitted other than a nameplate of no more than one square foot in area flush mounted to an outside wall.*
7. *No commodity shall be sold on the premises.*
8. *No mechanical equipment is used except for basic hand tools and an air compressor.*
9. *The exterior of the accessory structure shall not be painted or constructed to indicate from the exterior that the structure is being utilized for any purpose other than that of a detached residential accessory building.*

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 has been occupied with a single family home since the late 1800's with business operations occurring in a detached garage over the last 30 years. The new structure will be utilized as a home occupation in a same manner that the existing structure has operated in the past.*
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 current use of the property will continue as is with a home occupation to be located in a new accessory structure. Adjacent land uses include both existing single-family residences and industrial uses.*
3. *The need for the variance arises from some condition peculiar to the property. The zoning ordinance does not permit a single-family residential use in the I-1 Light Industrial District or allow for the expansion of a non-conforming use. The use variance will allow for the continued use as a residence with a home based occupation.*
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. Without the use variance, the business will not be able to expand as necessary.*
5. *The approval will not substantially interfere with the Mishawaka 2000 Comprehensive Plan. The property will continue to be occupied as is. The new structure will have no physical appearance, except for a small sign, if desired, that indicates it being utilized for any other purposes than that of a detached residential accessory building.*

MOTION: Charles Krueger moved to forward Appeal #19-35 to the Common Council with a favorable recommendation. Larry Stillson seconded; motion carried with a vote of 3-0.

ADJOURN: 6:46 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner