

SEPTEMBER 10, 2019

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, September 10, 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, Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

Mr. Trippel explained the Rules of Procedure.

The Minutes of the August 13, 2019, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #19-36 An appeal submitted by Gloria J. Kingery requesting a Developmental Variance for **217 West LaSalle Avenue** to allow a covered porch with a 12' 6" front yard setback.

Gloria Kingery, 217 W. LaSalle Avenue, said she wants to put on a porch that's different from what she has now; she wants it to be covered. She said she's having problems with the awning due to ice damage. Ms. Kingery said the porch itself is made of concrete and is leaning.

Mr. Trippel closed the Public Hearing on Appeal #19-36.

Staff Recommendation

Staff recommends **approval** of Appeal #19-36 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: Chris Tordi moved to approve Appeal #19-36. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #19-37 An appeal submitted by Paul. A and Kathy F. Kitkowski requesting a Use Variance for **3723 North Home Street** to allow outside storage and a Developmental Variance to permit unpaved area within outside storage area.

Anthony Piraccini, 633 Windy Cove Court, Mishawaka, said he's a licensed real estate agent representing the purchaser of the property. He said Home Street is an industrial park. He said the contingent user is Milestone Fence who are looking to relocate their primary business operation to this site.

Mr. Piraccini said they are going to clear about ¾ of the back area and the rest will be kept and available; fencing will be around the entire area. There will be land available for possible future expansion. He said the back of the property is over 1,000 ft from any residential property and over 1,300 ft from Day Road.

Mr. Piraccini talked about where the property will be paved and all loadings will be done in this area and materials will be taken to the back by forklift.

Mr. Piraccini also said they have read staff recommendations and agree with all conditions.

Mr. Tordi asked if they were aware of the conditions regarding vehicles. Mr. Piraccini said yes.

Mr. Trodi asked if he could explain the gravel area. Mr. Prince said the gravel area will be storage of fencing materials.

Chris Loftus, owner of Milestone Fence, said outside storage will pretty much be fencing material such as pipe, wire, etc. He said plans are to expand the parking area for employee parking and added 50' will be paved where trucks and trailers will be stored and unloaded. The area past that will be for storage.

Opposition

John Doster, 5104 High Meadow, owner of J & J Buildings, said he owns the parcel directly north of the subject parcel and he built Roofers Mart a little over a decade ago. He said at that time they needed outside storage and staff was opposed to it at the time. Mr. Doster said their preference is to remain with the required paving and decorative fencing. He said they think the integrity of the park should remain as it has been.

Mr. Stillson asked if they paved the entire parcel. Mr. Doster said they are asking for it to be consistent with zoning. What was imposed on them, they should have to do as well.

Mr. Prince read a Letter of Remonstrance from Jon and Lisa Marshall, 14768 Day Road, Mishawaka.

Rebuttal

Mr. Loftus said they are planning on screening from the building on the back as far as they need to and equipment will be stored inside the building. Screening can be moved up or back as needed. He also said they plan on leaving a buffer of trees in the back so it is

blocked. Mr. Loftus said they aren't going to have stuff everywhere and will take the screening as far as it needs to be.

Mr. Trippel closed the Public Hearing on Appeal #19-37.

Staff Recommendation

The Planning staff recommends approval of Appeal 19-37 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 behind the building, 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.*

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 Home Street, behind the 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: Charles Krueger moved to forward Appeal #19-37 to the Common Council with a favorable recommendation. Larry Stillson seconded; motion carried with a vote of 5-0.

APPEAL #19-38 An appeal submitted by EIG Edison Park Center, LLC, requesting a Use Variance for **605 West Edison Road, Unit L**, to permit permanent make-up services (microshading).

LaSheen Taylor, 605 W. Edison Road, Mishawaka, said she was asking to allow semi-permanent make up for micro-shading. She said the difference between blading and shading is it's actually done with a machine and inserting pigment into the eyebrow area.

Mr. Trippel said he doesn't understand why it's a zoning issue. Mr. Prince said it's because the Zoning Ordinance classifies it as tattooing.

Mr. Tordi asked if she would be tattooing. Ms. Taylor said no, only microshading.

Mr. Trippel closed the Public Hearing on Appeal #19-38.

Staff Recommendation

Staff recommends in **favor** of Appeal #19-38 a Use Variance, to allow microblading services in Unit L at 605 W. Edison Road. 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 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 #19-38 to the Common Council with a favorable recommendation. Larry Stillson seconded; motion carried with a vote of 5-0.

APPEAL #19-39 An appeal submitted by Geraldine Harrington requesting a Developmental Variance for **109 Ray Street** to permit a handicap accessible ramp with a 0' front yard setback.

Cathy Hann, 57601 Blackberry Road, Mishawaka, appeared on behalf of her mother, Geraldine Harrington. She said her mother has been in a nursing home and hospital most of the summer. The doctor recommended putting in a ramp and they put it up on a weekend as she was going home on a Monday.

Mr. Trippel closed the Public Hearing on Appeal #19-39.

Staff Recommendation

Staff recommends **approval** of Appeal #19-39 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 Kruger moved to approve Appeal #19-39. Marcia Wells seconded; motion carried with a vote of 5-0.

APPEAL #19-40 An appeal submitted by Greenwalt Development Group, LLC, requesting various Developmental Variances for **3909 North Main Street** to allow for a reduction in number of parking spaces, rear building setback, and landscaping.

Andrew Cunningham, JPR, 325 S. Lafayette Blvd, South Bend, appeared on behalf of the Appellant. He said the site is the former USA Skate Center and the adventure park will be an indoor recreational facility. The existing building and parking area will all be removed and the proposed building will be approximately 35,000 sqft.

Mr. Cunningham said the site will have a northern entry and the parking lot will be landscaped and lighted, and stormwater will be collected on site. Utilities will be Mishawaka utilities and connected.

Mr. Cunningham said they are seeking three variances. The first is for parking; 140 spaces are required and they are able to provide 126 spaces, this is still over the number of spaces that are required.

The second variance is to reduce the rear yard setback. He said this allows them to maximize onsite parking and also provides for more spaces up front. Mr. Cunningham said an existing AEP power line runs along that line and prohibits over-story trees. There will be adequate landscaping for the rest of the site. Mr. Cunningham also said there is an existing low vegetative screen and fence that exists along the property boundary. The site aesthetics will be improved from today.

Mr. Stillson asked if they considered having more than one access to the site. Mr. Cunningham said it had more to do with the curvature of Main Street.

Mr. Stillson said it looks like it could get congested and bottleneck. Mr. Cunningham said the drive is on Main Street and they worked with Planning to improve the entrance. They are also widening the throat for adequate stacking.

Mr. Prince said when they filed they had parking spaces all along the front of the building and they improved the drop-off area. He said there may be times there are back-ups and they will be on their property and not Main Street. Engineering said an additional access was not a consideration.

Mr. Trippel asked if there would be enough parking. Mr. Prince said we rely on unique businesses to identify the minimum they need and they don't want them to overbuild; we're comfortable if they are comfortable.

Mr. Trippel closed the Public Hearing on Appeal #19-40.

Staff Recommendation

Planning Staff recommends approval of Appeal 19-40 to allow a reduction in the required number of parking spaces, rear yard building setback, and no landscaping along the south property line for a proposed 35,000 sq. ft. indoor recreational facility.

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. Per the applicant and future tenant's experience, the number of proposed parking spaces exceeds the number required to meet the demand for the proposed facility. The reduced rear yard setback is minimal with rear yard landscaping, as required, being provided between the building and rear property line. In lieu of the required trees, a landscaped buffer of 13' is proposed between the parking area and side (south) property line in addition to an existing low vegetative screen along this property line.*
- 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 existing site conditions, being a vacant commercial building and site, will be improved with the proposed redevelopment of the property. The requested variances will not affect the adjacent properties.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. The required number of parking spaces, per the zoning ordinance, cannot be provided within the confines of the property. Adhering to the rear yard building setback would not allow for an adequate number of parking spaces or provide the proper pedestrian and vehicular circulation/access to the proposed facility. The existing AEP transmission line easement does not allow for trees to be planted along the south property line.*

MOTION: Larry Stillson moved to approve Appeal #19-40. Marcia Wells seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:28 p.m.

Kenneth. B. Prince, City Planner

Kari Myers, Administrative Planner