

NOVEMBER 12, 2019

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

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

Mrs. Wells explained the Rules of Procedure.

The Minutes of the October 8, 2019, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #19-48 An appeal submitted by Jade Realty Michiana LLC and 4Tron Investment LLC requesting a Use Variance for **815 North Main Street** to allow a two-family dwelling in R-1 Single Family Residential zoning district.

Fengrong Ma, 301 S. Lafayette Blvd., South Bend, said she is the owner of Jade Realty and would like the property to be a two-family home instead of single family.

Mr. Tordi said according to the staff report it sounds like improvements have been done and it's currently a 3 unit structure. Ms. Ma said yes.

Mr. Tordi said it's zoned R-1 and you knew it. Ms. Ma said she didn't know that's how it was zoned as she got it from the Sheriff's sale. The information she had it was used for commercial for a bit so she presumed it was a mixed use.

Mr. Tordi said there were building improvements done without permits. Ms. Ma said yes, they did it themselves and it was a mistake.

Mr. Tordi also said there were items that didn't meet code. Ms. Ma said she will address that and a contractor will pull a permit and work with the Building Department.

Mr. Tordi said staff is recommending it be a two-family and everything gets brought up to code. Ms. Ma said yes, they will follow that.

Mr. Stillson asked if they had prospective renters or will open to rentals when complete. Ms. Ma said will be used for a rental.

Opposition

Casey Harris representing Romell Reed owner of 812 N. Main Street said he doesn't think this will affect the property across the street. Mr. Prince said this isn't rezoning the property, but a Use Variance to allow 2 families to occupy the building and not single family. It only affects the property in question.

Kurt Krueger, 901 N. Main Street, said his main concern was parking. He's had parking problems since before it became an apartment. He said he does know there are three mail boxes on the building. If two people rent each place, that's 2 cars and there's no parking. They also litter.

Robert Shannon, 115 W. Battell Street, said he has similar issues as his neighbor and the parking is getting out of hand. You can't park on Main Street and the renters are parking in front of their homes and taking their spaces.

Mr. Shannon said they have done major remodeling without permits, turned into 3 units and people are coming and going all the time. People cut through his yard and the hair salon employees are taking spots in the back and on the street.

Mr. Shannon said parking is a major problem and he feels it hurts property value. People are cutting through the yard to get to the back of the apartment. He said 3 units were done under the radar and they say they'll make it 2 units. He said there are cars there that just sit and won't start. He said even if it is 2 units and each unit has 2 people and they have people over, that's 10-12 people.

Mr. Tordi asked Ken about the 2 off street parking spaces. Is there additional parking? Mr. Prince said staff's recommendation is 2 units because the ordinance requires 4 parking spaces and they can provide 4 spaces.

Mr. Tordi asked if this property had 4 parking spaces. Mr. Prince said yes, they can accommodate 4 spaces. Also, staff needed to determine how best to allow reasonable use of the property. Historically, it was a karate studio and they downsized from C-1 to R-1. Once it was sold at Sheriff's sale, it fell off the radar until now and that's why we are here. He said from a legal perspective, we have to provide reasonable use of the property. It's a large property and part of it is that if it's that large, what is the corresponding impact? You have to fight for your parking spot because everyone can park on the street. He said there are many houses in older neighborhoods with limited parking.

Mr. Stillson asked how will they police to make sure it will be converted to 2-units. Mr. Prince said we will have an inspection and there will be further inspections to make sure it's in compliance.

Mrs. Wells asked if they will combine the 2 apartments below into one space. Mr. Prince said we can't determine how they break them up.

Rebuttal

Ms. Ma apologized for parking as one tenant has more people there than they thought. The neighbor told them about it. The tenant said they would only come at night and she asked them to go. She said they are aware of the parking situation and they will take it seriously. She said they overlooked the situation and they moved out. Now there is only one lady upstairs and one lady downstairs.

Mrs. Wells asked Ms. Ma if she lived locally. Ms. Ma said she has a property manager who will look after things. She said she can leave her number if they have issues that come up.

Mr. Krueger said you are opening a can of worms. Ok, it's 2 dwellings. Will you get college kids who let their buddies there. Just because he has a number doesn't mean anything. If he wants to have a business at his home, he would have to provide parking. Mr. Krueger said Dr. Barkes next door had to put in parking and that was half of his property.

Mrs. Wells closed the Public Hearing on Appeal #19-48.

Mr. Krueger said there are 2 rental units and that's 2 spaces for each unit. That's the way he is looking at it. He said staff is recommending approval and he doesn't see any reason why it shouldn't be approved.

Staff Recommendation

The Planning Staff recommends approval of Appeal 19-48 to allow an existing non-conforming multi-family residential structure located at 815 N. Main Street to be used as a two-family dwelling.

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 required permits will be secured and codes adhered to. Adequate off-street parking to serve the two units will be provided on the property.*
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 use is compatible with the nearby land uses which include single-family, two-family, and multi-family residential, and commercial. Renovation and investment in the deteriorating property will likely have a stabilizing effect.*
3. *The need for the variance arises from some condition peculiar to the property. The zoning ordinance does not permit a two-family dwelling in the R-1 Single Family Residential District. When purchased by the Appellant, the structure was already divided into a downstairs commercial space and an upstairs residential unit. The Appellant states that the structure is too large for single-family residential use.*
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 structure would have to be converted back to a single-family residential home. According to the Appellant, single-family residential use is not financially feasible at this property.*
5. *The approval will not substantially interfere with the Mishawaka 2000 Comprehensive Plan. Use of the property as a two-family dwelling is less intensive than the preferred commercial use as identified in the comprehensive plan.*

MOTION: Charles Krueger moved to forward Appeal #19-48 to the Common Council with a favorable recommendation. Motion fails for lack of a second.

Chris Tordi moved to forward Appeal #19-48 to the Common Council with an unfavorable recommendation. Larry Stillson seconded; motion carried with a vote of 3-1 (Krueger).

APPEAL #19-49 An appeal submitted by Bruce Gafill/Gafill Projects, Inc., requesting various Developmental Variances for **1231 Lincolnway West** to allow a reduction of landscaping and parking spaces.

Larry Sexton, 1010 W. Broadway Street, Mishawaka, said he wants to do a seamless gutter machine shop out of the building. He said he just wants to put parking next to the building and people want to cut through at the light. Mr. Sexton said he would eventually like to put up a gate.

Mr. Sexton said it's just him and another employee and he just needs 2-3 spots. He said it's a good location for what he is doing.

Mr. Sexton said the City wants him to plant some trees and he will do so in the spring because of the weather.

Opposition

Erik Waelchli, 1217 Lincolnway West, Mishawaka, said he's the neighboring property. He asked if there would be more blacktop? Also, what are the limits of the trees? Will it be a forest or individual trees.

Mr. Prince gave a brief history of the property and said INDOT took away some parking. He said the only place to plant trees will be in the back, a total of 3 trees and can't plant in the right-of-way out front.

Rebuttal

Mr. Sexton said honestly, he doesn't want the trees; he was told he had to go with it. He said if the City wants trees, he'll plant trees.

Mrs. Wells closed the Public Hearing on Appeal #19-49.

Staff Recommendation

The Planning Department recommends approval of the aforementioned developmental variances for 1231 Lincolnway West. This recommendation is based on the following finding of fact:

- 1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because the conditions on the property are existing.*
- 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 conditions are existing and several site improvements to the property are proposed or have been made.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the site is small in size and does not allow for required developmental standards without hindering the functionality of the property for the intended use.*

MOTION: Larry Stillson moved to approve Appeal #19-49. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #19-50 An appeal submitted by SCM 10X Mishawaka I, LLC, requesting various Developmental Variances for **vacant property north of 5102 North Main Street** to allow a reduction in landscaping and pavement setbacks.

Mike Huber, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the appellants. He said they received a Use Variance for the property to allow multiple buildings on a single site and also for a drive-thru. He said they also received Site Plan approval for the site.

Mr. Huber said the property owner has received interest from a tenant to actually own the property instead of being a tenant. They were asked to create a plat and subdivide the lot and in doing so, has resulted in the need for a few variances.

Mr. Huber said they are requesting variances for parking setback and side yard landscaping. He said they haven't changed the use of the property. He said it's a challenge with the site connectivity thru the entire parcel and also Qdoba and also the proposed development to the south and east of the site.

Mrs. Wells closed the Public Hearing on Appeal #19-50.

Mrs. Wells said when you come out of Qdoba, you can only turn north. Mr. Huber said yes, on the north end. The southern entrance will be the main access to the property and will be full access.

Staff Recommendation

Planning Staff recommends approval of Appeal 19-50 to allow a reduction in the required parking (pavement) setbacks and landscaping for a multi-building mixed used commercial development within the proposed Main Street Commons Subdivision.

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 need for the requested variances are solely a direct result of subdividing the property into three (3) new lots. The property will be developed in a manner consistent with the previously approved site plan when proposed for development as a single parcel.*
- 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 variances required for subdividing the property from one (1) to three (3) lots does not change or impact the use and design of the proposed development. The property will be developed in a manner consistent with the previously approved site plan when proposed for development as a single parcel.*

3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Adhering the required development regulations, as a direct result of subdividing the property, would result in a significant redesign of the property and loss of needed parking spaces.*

MOTION: Larry Stillson moved to approve Appeal #19-50. Chris Tordi seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:35 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner