

FEBRUARY 11, 2020

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, February 11, 2020, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Marcia Wells, Larry Stillson, and Joel Dendiu. Absent: Chris Tordi. In addition to members of the public, the following were also in attendance: Ken Prince, David Bent, Derek Spier, Christa Hill, and Kari Myers.

The meeting was turned over to Ken Prince for the election of officers.

ELECTION OF OFFICERS:

MOTION: Larry Stillson moved to nominate Marcia Wells as Chairman. Charles Krueger seconded; motion carried with a vote of 3-0.

MOTION: Joel Dendiu moved to nominate Larry Stillson as Vice-Chairman. Charles Krueger seconded; motion carried with a vote of 3-0.

Mrs. Wells explained the Rules of Procedure.

The Minutes of the December 10, 2019, meeting, were approved as distributed.

Conflict of Interest was not declared.

**PUBLIC HEARING:
APPEAL #20-01**

An appeal submitted by James W. Clardy, Jr., and Theresa Clardy requesting a Use Variance for **4416 Lincolnway East** to allow a contractor's office in the R-1 Single Family Residential District.

Tiffany Gilbert, 4415 Lincolnway East, Mishawaka, said they are requesting a Use Variance to build a 30' X 60' addition to the house that will be used for Michiana Contract Services. She said the variance is required because the zoning doesn't permit a contractor business in residential.

Ms. Gilbert said the building will be used just for their business; they aren't selling anything out of it, just a glorified home occupation.

Mrs. Wells closed the Public Hearing on Appeal #20-01.

Staff Recommendation

The Planning Staff recommends approval of Appeal 20-01 allow a new building addition on an existing single family residence for warehousing/storage for a contractor's business subject to the following conditions:

- 1. The use variance shall only permit warehousing and storage related to appellant's operations for a contracting business.*
- 2. All vehicles and equipment shall be stored within the building addition. No outside storage is permitted.*
- 3. No persons employed by the business other than those residing on the premises shall park personal vehicles on the property or within the adjacent public right-of-way.*

4. *No signage shall be permitted other than a nameplate of no more than one square foot in area flush mounted to an outside wall.*
5. *No commodity shall be sold on the premises.*

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 state and local building codes 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. The current use of the property will continue as is with the addition of warehousing and storage related to the appellant's business operations. The building addition will be similar in character to a large attached garage which would be permitted if not used for business purposes. A majority of the adjacent land uses are commercial.*
3. *The need for the variance arises from some condition peculiar to the property. The zoning ordinance does not permit a contractor's business as a customary home occupation in the R-1 Single Family Residential District nor does it allow a residential building to be structurally altered or physically altered in order to accommodate a home 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 building addition could not be constructed and occupied for business purposes.*
5. *The approval will not substantially interfere with the Mishawaka 2000 Comprehensive Plan. The property will continue to be occupied as is with a building addition used for vehicle and equipment storage. Due to the property's location on the Lincoln Way East corridor, the plan identified a preferred or planned use as commercial.*

MOTION: Charles Krueger moved to forward Appeal #20-01 to the Common Council with a favorable recommendation. Larry Stillson seconded; motion carried with a vote of 4-0.

APPEAL #20-02 An appeal submitted by KLT Properties, LLC, requesting a Developmental Variance for vacant land at the southwest corner of Bremen Highway and Elmwood Avenue for a reduction in the required number of parking spaces for a proposed Taco Bell drive-thru restaurant.

Mike Huber, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Appellants. He said his client intends to purchase the property and build a Taco Bell restaurant at the corner of Bremen Highway and Meijer Drive. Mr. Huber said they are required to provide adequate parking, but due to limiting factors, they are requesting a variance to allow 24 parking spaces instead of 31.

Mr. Huber said according to Taco Bell, 70% of their customers go through the drive-thru and they designed the site to accommodate additional stacking in the drive-thru; for 8 vehicles. Due to the site configuration, they aren't able to get the 31 parking spaces.

Mr. Huber said the site is zoned PUD and it requires a larger front setback and they push parking so far forward. He also said they essentially have two front yards because of it being a corner lot. Mr. Huber said they approached the property owner to the north for an additional 5' of property, but they declined.

Mr. Huber said they have worked with staff to create a plan that meets their approval. He thinks they have done that and appreciates your consideration for the reduction of parking spaces.

Mr. Stillson asked Mr. Huber if he knew how many spaces the Taco Bell on Lincolnway has. Mr. Huber said he didn't know.

Mrs. Wells closed the Public Hearing on Appeal #20-02.

Mrs. Wells asked if Elmwood Avenue was open. Mr. Prince said yes.

Mr. Dendiu asked about the idea of the required parking spaces. Mr. Prince said it goes back to standards created in 1966. He said they vary greatly, but this is a minimum. Mr. Prince said other restaurants, such as Portillo's, built well over their required number. He said this is a minimum and it doesn't apply to every case, hence the variance.

Staff Recommendation

Planning Staff recommends approval of Appeal 20-02 to allow a reduction in the required number of parking spaces for a proposed restaurant with drive-thru facilities.

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 minimum corporate standards for the size of the proposed restaurant, adequate parking will be provided based upon customer demand and usage of the drive-thru facility.*
- 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 number of parking spaces provided, in addition to the number of vehicles that can be accommodated in the drive-thru lane, should be sufficient to support the proposed use.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. The appellant is unable to acquire additional land in order to meet the current parking requirements for the proposed use.*

MOTION: Larry Stillson moved to approve Appeal #20-02. Joel Dendiu seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:13 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner