

MARCH 10, 2020

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, March 10, 2020, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Chris Tordi, Marcia Wells, Larry Stillson, and Joel Dendiu. Absent: Charles Krueger. In addition to members of the public, the following were also in attendance: Ken Prince, David Bent, Derek Spier, and Kari Myers.

Mrs. Wells explained the Rules of Procedure.

The Minutes of the February 11, 2020, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #20-03 An appeal submitted by Cressy Land Investment, LLC, seeking various Developmental Variances for vacant land northeast of 4340 North Main Street for building height, frontage, and an off-premise sign.

Terry Lang, Lang, Feeney & Associates, 715 S. Michigan Street, South Bend, appeared on behalf of the Appellant. He said the site is being developed as a hotel, TownePlace, 3.5 acres in size and tucked away off of Main Street. Mr. Lang said access will be from a service drive north of Scotty's Brewhouse.

Mr. Lang said the variance is for no frontage as the site is being accessed via the service drive off of Main Street.

Mr. Lang said the height variance from 3 stories to 4 stories is due to the parapet makes the building 53'.

Mr. Lang said the variance for off-site signage as the site is located off of Main Street and they are asking for the sign to be located by the service drive off of Main Street. He said it's needed for visitors to find the hotel.

Mrs. Wells closed the Public Hearing on Appeal #20-03.

Staff Recommendation

Planning Staff recommends approval of Appeal 20-03 to allow a proposed lot to have 0' of frontage on a public right-of-way, a four-story building with a maximum height of 55 ft., and an off-premise sign for a proposed hotel.

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. Although no frontage will be provided on the public right-of-way,*

a new ingress-egress easement will be established to connect the hotel lot to the existing access easement and N. Main Street. The existing private access drive shall be improved to accommodate the proposed hotel and adjacent undeveloped property. The off-premise sign will provide better visibility and wayfinding to the hotel from the N. Main Street corridor. Furthermore, 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. An increase in visitors to the area together with access and utility improvements required to serve the hotel will incentivize further development of the adjacent vacant commercial property. Additionally, similar variances for increased building height have been approved throughout the City without adversely affecting the adjacent properties.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Public frontage cannot be established for the new lot due to it being landlocked between vacant commercial property to the west and Juday Creek to the north. The nearest public right-of-way is N. Main Street which is located more than 320' to the west. The increased building height will permit the hotel to be competitive and consistent with the development of other hotels in the area that have been granted similar variances. Not allowing an off-site sign will restrict the visibility of the hotel site from N. Main Street especially when the adjacent property to the west is developed.*

MOTION: Larry Stillson moved to approve Appeal #20-03. Chris Tordi seconded; motion carried with a vote of 4-0.

APPEAL #20-04 An appeal submitted by GLC-MAP McKinley Trust, LLC, seeking a Developmental Variance for 410 West McKinley Avenue to allow for a reduction in the required number of parking spaces.

Brian McMorrow, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Appellant. He said the site is at the northwest corner of McKinley and Grape and was previously Rally's hamburger stand. Mr. McMorrow said they have been before the Plan Commission and the Common Council and their first before this board.

Mr. McMorrow said what is being proposed is a fully automated car wash. He said patrons of the car wash will not get out of their car and there will be no oil change services.

Mr. McMorrow said the C-4 developmental regulations as written require 5.5 parking spaces for each 1,000 sqft of floor space and all but a few hundred sqft is occupied by the tunnel and equipment. They will only have 2-3 employees at any one time and code requires 28; they are proposing 23. Many will be used for vacuum stations, employees and patrons waiting on vac space. He said they feel there is more than adequate parking to serve this use.

Mr. McMorrow said the other 3 corners are occupied by a bank or a gas station and this is not an inappropriate use for the property.

Mr. Dendiu asked about the typical visit; do the patrons go thru and then vaccum? Mr. McMorrow said that's not what's frequently done, but is happening more and more per the owner. He would be surprised if it's half.

Mrs. Wells asked if there would be new driveways. Mr. McMorrow said no new curbcuts onto Grape or McKinley. They will use the existing and actually narrowing down and adding landscaping. He said the City recently relocated a driveway to better serve access to McKinley Commons.

Mrs. Wells closed the Public Hearing on Appeal #20-04.

Staff Recommendation

Planning Staff recommends approval of Appeal 20-04 to allow a reduction in the required number of parking spaces for John's Auto Spa - a proposed 4,715 sq. ft. automatic car wash 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. Due to the nature of the business, adequate parking will be provided for patrons of the facility and its employees.*
- 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. All adjacent properties at the W. McKinley Avenue and Grape Road intersection are occupied by commercial businesses including two banks with drive-thru facilities and a gas station. The approval of the variance will not affect these businesses in any manner nor detract from their use or value.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Requiring additional unneeded and underutilized parking spaces unnecessarily consumes land that will otherwise be used for landscaping and buffering.*

MOTION: Chris Tordi moved to approve Appeal #20-04. Larry Stillson seconded; motion carried with a vote of 4-0.

APPEAL #20-05 An appeal submitted by the Foundation for the Center for Hospice & Palliative Care, Inc., requesting a Use Variance for the Southeast Corner of Comfort Place and North Pine Street to permit an accessory structure on a lot without a primary structure.

Chris Chockley, Jones Petrie Rafinski, 325 S. Lafayette Blvd, South Bend, appeared on behalf of the Appellant. He said Mike Wargo was also in attendance.

Mr. Chockley said Hospice is wanting to construct a 24' X 45' accessory structure and will match the character of the newly constructed house on Cedar Street. He said the height will be 18'. The property is zoned R-1 and the Use Variance will allow the structure on the lot.

Mrs. Wells asked what would the building be used for. Mr. Chockley said it will be a maintenance building for equipment.

Mr. Tordi asked if it would have plumbing and water. Mr. Chockley said yes.

Mr. Dendiu said regarding the agreement about the sale of the property. What is the enforcement mechanism and who will be paying for removal of the building; owner or the

City. Mr. Prince said usually that language is used when it gets to the end and something happens and we hope this provides clarity and the building is used to the end of its life.

Mr. Prince said when accessory structures on lots by themselves in neighborhoods, it becomes a hang out or quasi commercial building, but we have no problem with what Hospice plans to do with it.

Staff Recommendation

The Planning Staff recommends approval of Appeal #20-05 to allow an oversized accessory structure without a primary structure, subject to the following conditions:

- 1. If the properties are not sold at the same time, or to the same owner, this building will be removed.*

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 structure was professionally built and meets all setback requirements.*
- 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 lot is part of the Center for Hospice campus.*
- 3. The need for the variance arises from some condition peculiar to the property because the Appellant owns additional property, and uses them as one campus, but they are separated by a street.*
- 4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property because the property is not large enough for additional buildings. This building takes up most of the available building envelope on this and triangle shaped lot.*
- 5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.*

MOTION: Joel Dendiu moved to forward Appeal #20-05 to the Common Council with a favorable recommendation. Larry Stillson seconded; motion carried with a vote of 4-0.

APPEAL #20-06 An appeal submitted by Bokhart Properties, LLC, requesting a Use Variance for 403 South Main Street and 411 South Main Street to allow furniture retail and showroom in I-1 Light Industrial zoning.

Angelyn Rockenbaugh, Interior Motives, 4000 E. Bristol St., Elkhart, and Maurice Bokhart, 16400 Kern Rd., Mishawaka. Ms. Rockenbaugh said she would like to obtain a variance for an interior design showroom. She said she is purchasing 403 and 411 S. Main Street so she can do furniture retail sales as well as different aspects of interior design business. Ms. Rockenbaugh said she would like to offer full line design studio and incorporate 411 into parking.

Mr. Bokhart said the City would like them to put in an underground tank to capture stormwater as concrete at 411 slopes to the north. He said they are committed to getting an approved plan and they don't want to make it their neighbors problem.

Mr. Tordi said access between the two properties should be removed and the gravel access needs to be hard surface. Mr. Bokhart said that will be taken care of. In the past, Mr. Mittler owned the long red building and stored his vehicles in it. When K & D Catering retired, he purchased the property and hasn't done much with it. Mr. Bokhart said he wasn't aware it was a problem as the rock has been there 4 years, but will be taken care of.

Mr. Prince said we need a plan what the improvements are and they need to meet current City codes. He said to clarify, the water on the property would need to be maintained on the property. The City is reacting to what you are looking to do. This is an initial approval and as you move forward with a detailed plan, will see what you want to do.

Opposition

Shelby Peck, 116 W. 6th Street, said she really didn't have a problem with the new business, but has a question about the boundary survey line. She said she owns property on the south side of the property. She's been on the property 48 years and what the survey lines were then, she doesn't recall, her neighbor bought, thinking lot #18, part of that parcel at one time used as an entrance to Mill Street up to that property. Ms. Peck said when they did that they had the property surveyed and when markers were put up and were 10' on that property. She wants it surveyed again to find where the property line is. She said she isn't looking for renumeration of any kind, just wants it corrected.

Mr. Prince said what you are saying makes sense and he can't account for the property survey. The existing parking lot has been there for decades and unless they were changing something near that boundary, we wouldn't require a survey. He said normally, we wouldn't require it and it would be up to the purchaser and the City wouldn't survey as it's a private matter.

Mr. Bokhart said when he purchased the property, it was surveyed. He said 411 S. Main has a 10' tall fence and wonders if it is a utility easement that goes through; there are power poles. Mr. Bokhart said the Raven's called him last night and they have no problem.

Mr. Stillson asked if there would be any unforeseen consequences continuing in order to do a survey. Mr. Prince said he recommends not getting involved as it's a private matter. The only issue this evening is the furniture and design business. The private property matter can go into legal issues and needs to be resolved independently from this body.

Rebuttal

Mr. Bokhar said he also owns 424 S. Main Street. He said unfortunately, the car business was not successful. The proposed business would be a good use for that part of town and ties in well with the new apartments.

Mrs. Wells closed the Public Hearing on Appeal #20-06.

Staff Recommendation

The Planning Staff recommends approval of Appeal #20-06 to allow for an interior design studio and furniture showroom (retail sales), in an I-1 Light Industrial District, subject to an administrative site plan being submitted addressing above comments.

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 and/or improvements to the existing structure;*
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 adjacent properties are zoned for industrial and/or commercial uses.*
3. *The need for the variance arises from some condition peculiar to the property in that it is located in an industrial area and does not allow retail sales which is more applicable to a commercial property.*
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 because the zoning does not allow for specific uses within industrial zoned properties. The property is not suitable to accommodate other general retail uses, therefore, we recommended the Use Variance process;*
5. *The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.*

MOTION: Larry Stillson moved to forward Appeal #20-06 to the Common Council with a favorable recommendation. Joel Dendiu seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:26 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner