

**AUGUST 11, 2020**

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, August 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.

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Mrs. Wells explained the Rules of Procedure.

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The Minutes of the July 14, 2020, meeting, were approved as distributed.

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Joel Dendiu declared a Conflict on Appeal #20-38. No other Conflicts of Interest were declared.

**PUBLIC HEARING:  
APPEAL #20-29**

An appeal submitted by Costco Wholesale Corporation requesting a Developmental Variance for vacant land at **605 East University Drive** to allow a 25' front building setback for a proposed credit union.

Austin Kirby, 7121 Grape Road, Granger, spoke on behalf of the variance request. He said it is a vacant outlot at Costco and the request is for a setback reduction to 25' instead of the required 75', as it will align with the current pavement and landscaping setback.

Mr. Kirby said the building is proposed to have a 53' setback and by reducing the setback it allows for the buyer to appropriately configure the site for their needs.

Mrs. Wells closed the Public Hearing on Appeal #20-29.

**Staff Recommendation**

*Planning Staff recommends approval of Appeal 20-29 to allow a reduction in the required 75' front building setback to a 25' front building setback for a new credit union. 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 University Drive corridor includes many commercial and multi-family residential structures with a 25' front setback such as those within the University Crossings development north of Target and Summer Place apartments. With a reduced setback, adequate sight distances will be maintained at the signalized intersection at the northwest corner of 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. Permitting a structure on the property to be closer to University Drive will not visually or functionally impact any adjacent properties nor affect their use or value. Similar setbacks are located along the University Drive corridor.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. When applying the required front and rear building setbacks, the buildable depth of the property is greatly restricted limiting how the property can be developed and the size of the building permitted on the lot.*

**MOTION:** Larry Stillson moved to approve Appeal #20-29. Joel Dendiu seconded; motion carried with a vote of 4-0.

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**APPEAL #20-30**

An appeal submitted by Joshua and Christine Krop requesting a Developmental Variance for **701 Fairmount Avenue** to allow a solid fence with a 12' front yard setback.

Joshua and Christine Krop, 701 Fairmount Avenue, said they would like to add a 6' addition to their existing privacy fence on to the end and back to the house.

Mr. Prince read a Letter of Support from Mr. Hong at 720 Fairmount Avenue.

Mrs. Wells closed the Public Hearing on Appeal #20-30.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal #20-30 to install a 6' privacy fence in the front yard with a 12' 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 extending the fence 6' is not substantial and will still be 15' from the sidewalk; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the back yard (west side) area is limited and extending the fence will create more usable area within the privacy fenced area for their granddaughter and dogs.*

**MOTION:** Joel Dendiu moved to approve Appeal #20-30. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #20-31**

An appeal submitted by Joseph and Vickie Calcagno requesting a Developmental Variance for **308 West Eleventh Street** to allow a solid fence with a 0' front yard setback.

Joseph Calcagno, 308 W. Eleventh Street, said he is a neighbor of the DeAmici's Club. He said he replaced a small piece of chain link fence and didn't realize he needed a permit.

Mr. Calcagno said he's been there 22 years and doesn't get in the club's business, but visitors smoke near the bicycle racks and would like to keep the fence because the smoke seeps into his living room. He said he did it nice and it doesn't interfere with the view of the street.

Mrs. Wells closed the Public Hearing on Appeal #20-31.

Mr. Prince said if this were a solely residential neighbor he probably wouldn't be in favor, but because of the use next door, it's unique and provides a separation.

**Staff Recommendation**

*Staff recommends **approval** of Appeal #20-31 to allow a 6' solid fence 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 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 request is minimal considering the existing setback of other homes in the neighborhood; and*

3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because of the large right-of-way the existing setback is already closer than the 25', any addition would require a variance.*

**MOTION:** Larry Stillson moved to approve Appeal #20-31. Joel Dendiu seconded; motion carried with a vote of 4-0.

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**APPEAL #20-32** An appeal submitted by Hartwell Services LLC requesting a Developmental Variance for **1711 East McKinley Avenue** to allow a 1,344 sqft addition to a 960 sqft accessory structure.

Drew Johnson, 1711 E. McKinley Avenue, said he wants to add onto an existing garage. He said the addition will be for the storage of vehicles, trailers and general supplies for his business. He said he has had some vandalism attempts.

**Opposition**

Larry Strombeck, 1712 E. LaSalle Avenue, said his is directly behind the property. He said he has 2 letters from neighbors who couldn't make it this evening.

Mr. Strombeck said Mr. Johnson has a structure that shouldn't have been there to begin with. It will be right out his back yard and all he sees is his business.

Mr. Strombeck said Mr. Johnson has turned the existing garage into a business with aerobics and drumming. He said if he wanted storage he has property where he can put as much storage as he wants and he wouldn't have to see it.

Mr. Prince read Letters of Opposition from Jerry and Joyce Fulmer, 1720 E. LaSalle Avenue, and Leslie and Kowski Richardson, 1704 E. LaSalle Avenue.

**Rebuttal**

Mr. Johnson said that it is true that it was used by his wife and business partner for a cardio drumming class. However, they have shut that business down and has private lessons during the week during the day. He said the addition on the garage is for storage and not her business.

Mr. Krueger asked when the business was discontinued. Mr. Johnson said in November, 2019. He said the signs are down and the website is down.

Mrs. Wells closed the Public Hearing on Appeal #20-32.

Mr. Stillson asked which building was the activity in. Mr. Johnson said the larger structure.

Mr. Prince said he would note that this is a variance for the size of the structure and not noise issues. He suggested the neighbors call Mr. Johnson and see if it can be worked out, then the police can determine if this rises to that or not. This issue is for the size of the structure only.

Mr. Johnson said he apologizes for the previous problems and invites the neighbors to come and talk to him directly.

Mr. Dendiu asked if the height and setbacks are in compliance. Mr. Johnson said yes.

Mr. Krueger asked if the building where the noise was coming from was leased. Mr. Johnson said no, it was his wife's business.

Mr. Prince noted that two businesses can be run from a C-1 zoned property.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal #20-32 to construct a 24' X 56' (1,344 sqft) addition to a 906 sqft detached garage. 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 property is large enough to accommodate a large garage without crowding the property; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because while the Appellant could build several 720 sqft structures on his large lot it is more practical to build one large structure to accommodate their business storage.*

**MOTION:** Joel Dendiu moved to approve Appeal #20-32. Larry Stillson seconded; motion carried with a vote of 4-0.

**APPEAL #20-33** An appeal submitted by James Nelson requesting a Developmental Variance for **1201 East Fourth Street** to allow a solid fence with a 0' exterior side yard setback.

James Nelson, 1201 E. Fourth Street, said he would like to build a back yard fence and wants go to along a property line. He said the right-of-way along Mason Street is large and the fence would be 16' from the street. Mr. Nelson also said there are large business along Mason Street and the fence would detract any more visibility than the bushes do.

Mrs. Wells said the Engineering Department has requested a corner cut. Mr. Nelson said he has no problem doing that.

Mrs. Wells closed the Public Hearing on Appeal #20-33.

**Staff Recommendation**

*Staff recommends **approval** of Appeal #20-33 to allow a 6' solid fence with a 0' exterior side yard setback with a 8-10' corner cut at the southwest corner of the yard where Mason and the alley intersect. 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 Mason is a dead end street with a large right-of-way. The corner cut will ensure site distance for cars exiting the alley; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant would have to give up 12.5' of his yard or put up a smaller fence that would not contain his dogs as well.*

**MOTION:** Larry Stillson moved to approve Appeal #20-33. Joel Dendiu seconded; motion carried with a vote of 4-0.

**APPEAL #20-34** An appeal submitted by Family Express Corporation requesting a Developmental Variance for **1702 Union Street** to allow a reduced rear yard setback of 15.47' from Eighteenth Street for a pet wash facility.

Chris Starke, WT Group, LLC, 2675 Pratum Ave., Hoffman Estates, IL, said Family Express is proposing a pet wash structure along 18<sup>th</sup> Street at the north end of the property. The pet wash will be 15' from 18<sup>th</sup> Street right-of-way.

Mr. Starke said the pet wash building design is harmonious with the primary building and will be screened by junipers and arborvitae. He said they wanted to make as visible as possible for patrons in all directions and providing a safe product for the community's use.

Mr. Starke said it will not be a risk to the community and will be accessible from several directions. He said it doesn't emit noxious fumes into the air and will be buffered by landscaping to lessen the impact on neighbors and has worked with staff for the best location.

Mr. Krueger asked if the pet wash will be staffed. Mr. Starke said no staff and personnel inside the convenience store will maintain and service the building.

Mr. Krueger asked if it was a "do it yourself" pet wash. Mr. Starke said yes, you place your pet in a tray and bathe it yourself. They provide soap and warm water.

Mr. Dendiu asked about the hours of operation. Mr. Starke said he doesn't have that information handy.

### **Opposition**

Kyle Stopczynski, 418 Eighteenth Street, said his concerns are will there be additional lighting, extra noise, and will it be a 24 hour operation?

Mr. Starke said there will be lighting inside the pet wash, but no added lighting outside.

Mr. Starke said there might be an exhaust fan that will exhaust air similar to a bathroom fan and that air is filtered.

Mrs. Wells closed the Public Hearing on Appeal #20-34.

Mr. Prince said a blank wall will be facing 18<sup>th</sup> Street.

### **Staff Recommendation**

*Planning Staff recommends approval of Appeal 20-34 to allow a reduction in the required 29' rear building setback to a 15.47' rear building setback for a proposed pet wash facility accessory to a Family Express convenience store, fueling station, and car wash. 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. A reduced rear yard setback for the proposed pet wash facility will allow for safe accessibility from the north side of the convenience store interior to the site and from the 18<sup>th</sup> Street right-of-way via the existing sidewalk.*
- 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 pet wash will be adequately screened with landscaping to provide minimal impact to the residential area north of 18<sup>th</sup> Street. The facility will also be painted to be cohesive with the existing primary building.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Adhering to the required setbacks would place the proposed pet wash facility in a less visible or heavily trafficked area which is not ideal for patrons visiting by foot or car. Several other potential locations were reviewed and determined to be inadequate due to lack of visibility, existing utilities, unsafe access, and grading.*

**MOTION:** Charles Krueger moved to approve Appeal #20-34. Larry Stillson seconded; motion carried with a vote of 4-0.

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### **APPEAL #20-35**

An appeal submitted by JADET LLC requesting a Use Variance for **1035 East McKinley Avenue** to allow sale of tires and automotive mechanical work.

Jerry DeTurk, 294 E 350 N, Warsaw, said they were asking for a variance to allow sales of tires and automotive work.

Jesus Navarro, 1622 S. Jackson, South Bend, said there is nothing in the building now; the building is empty.

Mr. Krueger asked if there is a garage there for auto repair and he assumes you'll have used oil and cleaning chemicals.

Mr. Navarro said he'll be using the back garage and will be strictly wheels. He said the city told them they had to put in an oil separator, but they decided to stay away from that because it's costly to install one. Mr. Navarro said as of right now, he'll stay away from fluids, oil, and transmission fluids.

Mrs. DeTurk said it will be strictly wheels and tires.

Mrs. Wells closed the Public Hearing on Appeal #20-35.

### **Staff Recommendation**

*The Planning Staff recommends approval of Appeal 20-35 to allow a use variance for automobile repair and sale and installation of tires and wheels in I-1 Light Industrial District at 1035 E McKinley. 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 there are other similar uses in the McKinley/Merrifield corridor;*
- 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 property will be used similarly to other properties in the immediate area;*
- 3. The need for the variance arises from some condition peculiar to the property in that automobile uses are not allowed in the I-1 Industrial District;*
- 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 property is currently vacant, but the proposed tenant's use is not permitted;*
- 5. The recommendation is consistent with Comprehensive Plan which indicates both general commercial and industrial uses for this area.*

**MOTION:** Joel Dendiu moved to forward Appeal #20-35 to the Common Council with a favorable recommendation. Larry Stillson seconded; motion carried with a vote of 3-1 (Krueger).

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**APPEAL #20-36** An appeal submitted by Kevin. R and Debra D. Acrey requesting a Developmental Variance for **1201 South Main Street** to allow an accessory structure with a 0' exterior side yard setback.

Kevin and Debra Acrey, 1201 S. Main Street, said they want to put a shed in the northwest corner of the yard inside the fence. He said he already started the shed because he didn't know he had to have a permit for the shed. Mr. Acrey said he got the variance for the fence years ago and didn't know a permit was required for the shed.

Mrs. Wells asked what the shed was for. Mr. Acrey said storage.

Mrs. Wells closed the Public Hearing on Appeal #20-36.

Mr. Dendiu asked Mr. Prince if he could say anything more about Engineering's comments. Mr. Prince said no, it's also encroaching into the right-of-way. He said from Planning's perspective, it's inside the fence and not hurting anything more than the fence does.

**Staff Recommendation**

The Staff recommends **approval** of Appeal #20-36 to allow an accessory structure with a 0' exterior side 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. The proposed shed will be located within the existing privacy fence. Sight distances along the adjacent public streets and alleys will not be impeded or restricted any more than current conditions due to the adjacent fence and landscaping.
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 shed will not obstruct or interfere with any area adjacent to the property.
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. A larger than normal right-of-way width for W. 13<sup>th</sup> Street coupled with a narrow lot does not allow adequate room within the property for the proposed shed.

**MOTION:** Charles Krueger moved to approve Appeal #20-36. Joel Dendiu seconded; motion carried with a vote of 4-0.

**APPEAL #20-37** An appeal submitted by SCM 10X Mishawaka II, LLC, requesting a Sign Variance for **5212 North Main Street** to allow a sign to project above an awning.

Shawn Denison, North American Signs, 3601 W. Lathrop St., South Bend, appeared on behalf of the Appellants. He said they are requesting a sign variance to allow canopy letters that are considered a roof sign. Mr. Denison said the letters are on top of an awning structure that sits lower than the roof. He said Burger King and Taco Bell have similar signs.

Mrs. Wells closed the Public Hearing on Appeal #20-37.

**Staff Recommendation**

The Staff recommends **approval** of the roof sign variance. 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 all 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 sign is not attached to the roof, and extends less than two feet above the canopy;
3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because corporate standard signage cannot be utilized on a building that was designed to incorporate the proposed canopy signage.

**MOTION:** Larry Stillson moved to approve Appeal #20-38. Charles Krueger seconded; motion carried with a vote of 4-0.

**APPEAL #20-38** An appeal submitted by A & E Management LLC, requesting Use and Developmental Variances for **3025 Grape Road** to allow a six (6) unit senior care facility and a reduction in the required number of parking spaces.

Mike Huber, Abonmarche Consultants, 315 W. Jefferson Blvd., South Bend, appeared on behalf of the Appellants. He said the property owners are asking to create a residential facility on the lot behind the existing commercial facility. The Use variance is for the residential component on commercial zoned land.

Mr. Huber said it will effectively function as a 6 bedroom home.

### **Opposition**

Tim Checkley, 509 W. Eisenhower Drive, Mishawaka, said his property is 2 houses west of the facility. He said his issue is one of safety as they want to eliminate parking spaces and there are several cars up and down the road on both sides of the street most of the time. It narrows the road down to one lane and there is no parking for the business as it is.

### **Rebuttal**

Mr. Huber said the existing facility provides parking for its business and they are not altering parking for that. They are requesting to use the 2 garage spaces and the long driveway. He said the residents are full-time residents and have no need for cars and they anticipate just staff walking over from the commercial facility. Mr. Huber said that's why they chose this site so they don't have to travel great distances to care for residents. He said some family will visit and they couldn't accommodate the traffic. They have provided parking for the commercial side and see no need for additional parking.

Mr. Checkley asked of those parking on the street are customers and not staff? Mr. Huber said he can't speak for the client as to who is parking there. He said it's his understanding they can adequately park staff.

Mr. Checkley said he has trouble getting on to Grape Road. Mr. Huber said the owner said during the survey, cars were parked on the road.

Mr. Checkley said he's been in the construction business most of his life and they are no construction vehicles but personal cars.

Mrs. Wells closed the Public Hearing on Appeal #20-38.

Mr. Stillson asked Mr. Huber if they anticipate visitors to the facility. Mr. Huber said he would hope so.

Mr. Stillson said that leads to the parking and if you expect visitors to the facility. Mr. Huber said there is a driveway and a 2 car garage and visitors will probably be after normal business hours and on weekends and there are 20 spaces at the adjacent facility. He also said the driveway can provide parking for 6 vehicles.

Mr. Prince said regarding the parking as identified, it is a good shared use and visitors will likely be after the commercial hours.

### **Staff Recommendation**

*The Planning staff recommends approval of Appeal 20-38 for a use variance to allow a six (6) unit senior care facility on proposed Lot 2 of the Assisi Village Minor Subdivision, and a developmental variance to allow for a reduction in the required number of off-street parking spaces.*

*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 proposed use as a six (6) unit senior care facility will be located on a commercially-zoned property that currently includes an office use along a major corridor in the City. The proposed use provides a buffer and acts as a transitional use between the higher intensity uses along Grape Road and the residential uses to the west. Additionally, the proposed number of parking spaces within property owned by the appellant should provide adequate parking for both the residents and visitors of the 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. Permitted uses within the C-6 Linear Office*

*Commercial District are more intensive than the proposed use. The parking reduction will not negatively affect the area as parking requirements for the facility are anticipated to be limited.*

3. *The need for the use variance arises from some condition peculiar to the property in that the zoning ordinance does not permit a senior care facility within the C-6 Linear Office Commercial District.*
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 and result in practical difficulties in the use of the property. The use variance will permit the appellant the ability to construct a senior care facility on property they already own and adjacent to their existing offices. Requiring additional parking spaces to meet code would unnecessarily consume land and would be seldom occupied. The proposed number of spaces should provide adequate parking.*
5. *The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates service commercial use for this area. The proposed use provides a buffer and acts as a transitional use between the higher intensity uses along Grape Road and the residential uses to the west.*

**MOTION:** Larry Stillson moved to deny Developmental Variance #20-38. Charles Krueger seconded; motion carried with a vote of 3-0 (Dendiu abstained). Motion carried with a vote of 3-0.

**MOTION:** Larry Stillson moved to forward Use Variance #20-38 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 3-0 (Dendiu abstained).

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**APPEAL #20-39** An appeal submitted by South Bend Real Estate 3 LLC requesting a Use Variance for **549 West Sixth Street** to allow the continuing use of a four-unit apartment in R-1 Single Family Residential zoning district.

Suzanne Plugis, Pear Tree Property, 2917 Mishawaka Avenue, South Bend, presented the request. She said their company is in the process of selling this property and need the use grandfathered. It's zoned R-1 but is a 4 unit apartment.

Mrs. Wells asked if this was a rental. Ms. Plugis said yes.

Mrs. Wells asked if they were selling as a rental. Ms. Plugis said yes.

Mrs. Wells asked if the number of units will remain the same. Ms. Plugis said yes.

Mrs. Wells closed the Public Hearing on Appeal #20-39.

Mr. Krueger asked about parking. Ms. Plugis said there is parking along the side of the property and a garage in the rear that can be used.

**Staff Recommendation**

*The Planning Staff recommends approval of Appeal #20-39 to allow four units in R-1 Single Family Residential at 539 W. Sixth Street. 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 nothing is physically changing at the site. This use has been in existence since at least 1979.*
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 use of the property is not changing, only being made legal for financial institution purposes.*

3. *The need for the variance arises from some condition peculiar to the property because even though the property has been used this way for over 40 years, the zoning has not matched the use.*
4. *Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property because it is unclear if the property could be returned to a single-family home.*
5. *The recommendation is consistent, and/or, not in conflict with Comprehensive Plan which indicates low density uses for this area.*

**MOTION:** Larry Stillson moved to forward Appeal #20-39 to the Common Council with a favorable recommendation. Joel Dendiu seconded; motion carried with a vote of 4-0.

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Mr. Prince reminded everyone that our next meeting would be held on Wednesday, September 9.

**ADJOURNMENT:** 7:10 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner